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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

-----x

3 UNITED STATES OF AMERICA,

4 v.

13 CR 58 (KBF)

5 ANTHONY SERRANO,

6 Defendant.

7 -----x

8 New York, N.Y.

9 June 19, 2014

9:30 a.m.

10 Before:

11 HON. KATHERINE B. FORREST,

12 District Judge

13
14 APPEARANCES

15 PREET BHARARA

United States Attorney for the

16 Southern District of New York

RACHEL MAIMIN

17 RAHUL MUKHI

Assistant United States Attorneys

18 CESAR DE CASTRO

19 Attorney for Defendant Serrano

20 VALERIE GOTLIB

Attorney for Defendant Serrano

21 ALSO PRESENT: Danielle Craig, Paralegal

22 Todd Riley, Special Agent, DEA

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(Trial resumed; jury not present)

THE COURT: Good morning, everyone. We are ready to bring out the jury. Is there anything we should go over before we do that?

MR. MUKHI: No, your Honor.

MR. DE CASTRO: No, your Honor.

THE COURT: Let's bring out the jury. The plan, I take it, is still as we discussed yesterday, I will say, Mr. Mukhi, or Ms. Maimin -- whoever is sitting in that first chair is usually who I turn to -- would you like to proceed. You will rest. Mr. De Castro, is it still your intention to rest?

MR. DE CASTRO: Yes.

THE COURT: All right. Then having dealt with the motions, we will proceed directly to summations. All right, thank you.

(Jury present)

THE COURT: All right. Mr. Mukhi, would the government like to proceed, sir?

MR. MUKHI: Yes, your Honor. The government rests.

THE COURT: Thank you, Mr. Mukhi.

Mr. De Castro?

MR. DE CASTRO: The defense rests.

THE COURT: Thank you. The evidentiary record in this matter is now closed. What we are going to do next is we are

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1 going to hear the summations from the lawyers. The summations
2 are the opportunity for the lawyers to argue to you what
3 inferences they believe you should draw from the evidence in
4 this case. It's their opportunity to summarize and to collect
5 all of the evidence for you in a manner that they deem useful.

6 I want to remind you that nothing that lawyers say is
7 itself evidence; that the evidence is obviously the testimony
8 that you heard and the evidence that was otherwise admitted
9 that you heard me say the word "received" from time to time.

10 So, I'm going to have the lawyers proceed in just a
11 moment. However, now that the evidentiary record is closed, I
12 want to reiterate for you one instruction that I gave to you at
13 the beginning of this trial, which is to remind you that you
14 should not update your Facebook profiles, engage in any digital
15 media interactions, communications, Twitter or anything else,
16 update your profile on LinkedIn, anything at all with respect
17 to the fact that you are on jury service or anything about the
18 case. And I say that not that I think anyone will, but from
19 time to time there have been instances in the past where people
20 have, and so it's always prudent for us, until you have
21 delivered a verdict, to just make sure you are reminded of no
22 communications.

23 All right. With that said, Mr. Mukhi, sir, would you
24 like to proceed?

25 MR. MUKHI: Yes, your Honor. Thank you.

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Summation - Mr. Mukhi

1 (Audio played)

2 MR. MUKHI: His words, ladies and gentlemen. This
3 defendant July 28, 2013 was planning a burglary, sending
4 someone else in, won't get his hands dirty. He'll be the guy
5 around the corner.

6 July 9, 2013, attempted robbery of 20 kilograms of
7 heroin in the Bronx, he doesn't show his face; others are out
8 doing the dirty work.

9 THE COURT: I think you meant January 9. I'm sorry.

10 MR. MUKHI: January 9.

11 Ladies and gentlemen, October 14, 2012, Washington
12 Heights, he tracks down a drug dealer and his girlfriend,
13 stalks them on the streets of this city like they were his
14 prey, and when the time comes, he sends the others to face the
15 victims and rob them with a gun. He is blocking off the street
16 with his car so they can't escape. Ladies and gentlemen, he is
17 the guy around the corner. That's his MO.

18 Ladies and gentlemen, he wouldn't face his victims,
19 but now he must face your judgment. Even though he said he
20 wouldn't get his hands dirty, those hands are dirty, ladies and
21 gentlemen. They're dirty because the evidence at this trial
22 showed that he was a drug dealer, he was an armed robber, he
23 was part of that crew, and he is guilty as charged.

24 Now, what you have seen and heard over the last three
25 days is a mountain of evidence showing this defendant is guilty

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Summation - Mr. Mukhi

1 of every crime he has been charged with: Conspiring to deal
2 drugs, commit robbery, and possessing, carrying and brandishing
3 a gun when committing those crimes.

4 You know he is a drug dealer from many different ways.
5 The first witnesses you heard from told you about the heroin he
6 was selling out of his home. You saw the heroin yourself. You
7 learned, ladies and gentlemen, after that that this was just
8 the tip of the iceberg. He was a big-time drug robber, part of
9 a crew that was robbing other drug dealers of kilos of heroin
10 and cocaine that they would get for free by stealing it and
11 then sell to their own customers.

12 You heard about the October 14 robbery of the drug
13 dealer in Washington Heights, the drug dealer who came into
14 this courtroom and testified under immunity, that police stop
15 that was really a hold-up. Victor Moral and the victims
16 Erickson Gilbert and Escarly Ynfante gave you the blow-by-blow
17 of that robbery, and you heard all about the defendant's role
18 that night, driving in that red Toyota, telling everyone where
19 to go; and when the robbery went down, he boxed them in, he
20 boxed the victims in so they couldn't escape.

21 You saw the cell site data showing the defendant
22 traveling from his home in New Jersey to Washington Heights on
23 the night of the robbery, being on the block of the robbery at
24 the time the robbery is being committed, getting on the GW
25 Bridge, going to that secluded area in New Jersey where they

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Summation - Mr. Mukhi

1 tore up the car to look for drugs, and then he went home for
2 the night, back to that cell tower that's closest to his home.

3 You also saw all of the phone records showing that the
4 defendant was in contact with Moral and Javion Camacho more
5 than 70 times that night, just like Moral told you the
6 defendant was calling everyone to call the plays and audibles
7 leading right up to the robbery of the victims.

8 You also heard about the gun, the gun that the
9 defendant passed off in that bag, that was ultimately given to
10 Javion Camacho, King Kong, who had the gun on him as he was
11 robbing the victims with Moral and Alex Cespedes, while the
12 defendant was a a few feet away making sure everything went
13 according to plan. And you just heard the defendant's own
14 words. This is how he operated. Others did the real dirty
15 work while he was waiting around the corner.

16 You heard even more evidence, ladies and gentlemen,
17 all of it leading to one conclusion: The defendant is guilty
18 beyond any reasonable doubt.

19 So, let's walk through the evidence you saw and heard
20 right now. Now, I think there is some basic facts that are not
21 seriously in dispute at this trial. There was a drug robbery
22 crew. It existed, and it included people like Victor Moral,
23 Javion Camacho and Alex Cespedes. They were a crew of armed
24 robbers, and they robbed drug dealers with guns. Victor Moral
25 admitted that he was part of that crew when he testified. And

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Summation - Mr. Mukhi

1 there is no dispute that the way they did this was to dress up
2 and pretend to be police officers.

3 You saw all of the evidence that the DEA seized on
4 January 9. It's in that photo. You saw it on the table
5 yesterday. There is no dispute that there was this drug
6 robbery crew and they impersonated police to rob drug dealers.
7 You seen saw their cop car, the license plate that they used to
8 cover up their plate during the robberies so the victims
9 couldn't write it down. You also saw the fact that the car
10 said police on it. And you saw the picture of the intercom
11 they used to pull over victims during the fake traffic stops.

12 There is even no dispute that the defendant knew some
13 of the crew members. Javion Camacho and Julio Camacho were his
14 cousins. Ladies and gentlemen, they were not distant cousins.
15 Javion Camacho was in constant contact with the defendant, over
16 1,000 communications between the defendant and Javion Camacho
17 on this cell phone that Javion Camacho was using until October
18 2012, and then more than 350 contacts with this other phone
19 that Javion Camacho started using in November of 2012 until
20 January 9, 2013 when he was arrested at the robbery sting.

21 You even know that the defendant and Javion Camacho,
22 Kong, spoke to each other on days that the crew was committing
23 robberies. October 14, 2012, there was a robbery that day.
24 There are 28 communications between the defendant and Kong on
25 the day of that Washington Heights robbery.

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Summation - Mr. Mukhi

1 January 9, 2013, the day of the DEA sting, attempted
2 robbery of 20 kilograms of heroin, the defendant and Javion
3 Camacho are in contact 15 times on that day. There is no
4 dispute that the defendant knew some of the crew members.

5 There is also no dispute that this crew sold heroin
6 and cocaine. This is Javion Camacho talking to the DEA
7 informant on December 17, 2012. He is telling the CI that he
8 is dealing with dope right now, heroin, and it's more than a
9 kilogram, 1100 grams, and it's exclusive, it's fire, it's
10 untouched. You heard him talk about that. You also heard him
11 talk about how he used to be, Javion Camacho, a coke boy.
12 That's his field. You even saw some of the heroin. Here is
13 the photo of the heroin that Moral stole from a stash house in
14 Queens a few days before the January 9 robbery, a picture on
15 Moral's own cell phone.

16 Now, ladies and gentlemen, there is also no serious
17 dispute that members of the crew agreed to commit a robbery on
18 October 14, 2012, which took place right here, 171st and
19 St. Nick in Washington Heights, Manhattan. It took place at
20 8:58 p.m. Officer Briones came in, and she said that's the
21 time the robbery was recorded, 8:58 p.m.

22 You heard from the drug dealer victim, Erickson
23 Gilbert, who told you that he dealt heroin in the past,
24 although he didn't have any drugs on him that night. And I
25 don't expect there to be any dispute that this was an attempted

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Summation - Mr. Mukhi

1 drug robbery and that the robbers included Victor Moral, Javion
2 Camacho and Alex Cespedes.

3 Also, there is no dispute what these three did that
4 night. They were in that police car, they pulled over the
5 couple with lights and sirens, they pretended to be the police,
6 and they stole the car so they could search it for drugs.

7 So, what is in dispute? What is in dispute is:
8 First, did the defendant agree to distribute heroin and/or
9 cocaine with members of the crew? Second, did the defendant
10 agree to participate in any armed heroin and/or cocaine
11 robberies with members of the crew?

12 The question for you, ladies and gentlemen, is: On
13 October 14, 2012 was he in Washington Heights with Javion
14 Camacho, Alex Cespedes and Victor Moral, committing that
15 robbery of the couple you saw testify? Or was he -- as defense
16 counsel has suggested in his opening statement -- at a
17 restaurant or a club in Washington Heights with other people,
18 knowing nothing, doing nothing with respect to that robbery?

19 Ladies and gentlemen, the evidence you heard through
20 the more than ten witnesses who testified over the last three
21 days showed you these are not close questions.

22 Of course he was there committing that robbery. Of
23 course he was. He was out there on October 14, 2012 with other
24 members of the crew in that red Camry, blocking off victims
25 while the other crew members held them up for cocaine. He was

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Summation - Mr. Mukhi

1 there every step of the way. You know he was not at a
2 Washington Heights bar, or at a restaurant, because he had
3 agreed to commit that drug robbery with Moral, with Javion
4 Camacho and Alex Cespedes. We know that.

5 So, let's start there, the robbery you heard the most
6 about during this trial. What happened that night? The
7 victims arrived here, this barber shop on 164th and Amsterdam.
8 The police car was parked behind their van, and the crew
9 members waited to make their move. Moral told you that, and
10 the victims told you that.

11 Moral also told you that that night it was the
12 defendant who had contact with the tipster Nene. And the
13 defendant directed Moral to where the van was. You see, the
14 defendant got the tip, he had the phone that night. And when
15 Moral got to this location, the defendant told him he was there
16 by flashing his lights in that red Camry. Then they waited.
17 They waited until it was the right time to commit this robbery.

18 And, By the way, while we are on this photo, there was
19 some suggestion on the cross-examination of Moral that he was
20 lying or not credible on the fact that there is a bodega on
21 this block. Ladies and gentlemen, he was not lying about that.
22 Mr. Gilbert also told you that there is a bodega there. And if
23 you look closely to where both Moral and Gilbert told you there
24 was a bodega, you can even see the Newport sign.

25 Moral wasn't lying about the bodega, he wasn't lying

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Summation - Mr. Mukhi

1 about the defendant being there in the red Toyota, and he
2 wasn't lying about anything else that happened that night.

3 How do you know that? Here are Moral's two cell
4 phones hitting off a cell phone tower just a few blocks away
5 from that barber shop at 8:45 p.m. and 8:47 p.m., before he
6 starts heading north, the direction of the robbery. Alex
7 Cespedes, his phone hitting off the same cell phone tower right
8 near the barber shop at 8:45 p.m., heading north.

9 How do you know that the defendant is also there every
10 step of the way? The defendant's own cell site information.
11 There he is hitting off the cell phone tower in the same area
12 of the barber shop and of the robbery, just like Moral, just
13 like Cespedes. First he's hitting south, the direction of the
14 barber shop, then he is hitting north, the direction of the
15 robbery.

16 And, by the way, just like Moral told you, the
17 defendant who shows up first in Washington Heights that day,
18 the first hit is 8:17 p.m., all the way to the left of the
19 screen right above the George Washington Bridge. Why does that
20 make sense? It makes sense because the defendant had the phone
21 with the tip, he goes over to Manhattan first. He's got the
22 information; people follow him.

23 Now, Moral also told you that the defendant that night
24 was driving around furiously trying to outmaneuver the victims,
25 stay ahead of them, circling the block, speeding up to get past

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Summation - Mr. Mukhi

1 them. If you see, there is one hit, one hit all the way north
2 at 8:48 p.m., and it's coming from a southern direction where
3 they were circling the block and where they were committing the
4 robbery and stalking the victims at the barber shop. That's
5 consistent with him driving around.

6 Now, who did the defendant call during this time
7 period? Now, most of these calls, as you can see, are to
8 Moral. The first call in Manhattan, 8:17 p.m., call to Victor
9 Moral -- call from Victor Moral. Now, you know what that call
10 was about. The defendant is the one with the tip, he's telling
11 Moral where to go. Last call in Manhattan, Moral calling the
12 defendant. You know what that call is about. The defendant
13 was the one who was leading everyone to that warehouse area so
14 they could search the car; he was taking the lead. That's what
15 that call is.

16 Now, all those calls in between, between Moral and
17 Serrano, you also know what those are about. Moral told you
18 the defendant was in front of the victims' car, so he couldn't
19 keep track if they were going to make a turn, if they turned on
20 their blinker. He needed someone who was behind him to feed
21 him information about what they were going to do next, and
22 that's exactly what happened. Moral said he was feeding the
23 defendant information about where the victims were going so he
24 could keep in front of them, so he could cut them off when the
25 time was right.

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Summation - Mr. Mukhi

1 And, by the way, we obviously know this is the
2 defendant's phone. It's registered to his wife at his home.
3 It's in Javion Camacho's phone under Chill. That's the top.
4 And then the bottom is Victor Moral's phone, Chill JC. Chill
5 Jersey City.

6 Now, how do you know that it was the defendant using
7 his own phone that night? How do you know that, besides the
8 fact that he was calling Moral at the times and locations you
9 would expect him to be calling when he is committing a robbery
10 with Moral in that location? All of those numbers in between,
11 all of those 201 numbers, Agent Riley testified that those
12 numbers are also numbers that the defendant contacts all the
13 time on that phone. Those are not random numbers to Serrano.
14 Those three 201 numbers Serrano calls not just on that night
15 but all other days he's using the phone. It fits his call
16 pattern. It's his phone, and he's using it. You know the
17 defendant was using that phone that night because those calls
18 are to Moral and to other people he calls all the time.

19 Now let's go to the video.

20 (Video played)

21 There it is. You just saw it drive up on the street.
22 That's the red Camry. The defendant is in that car ahead of
23 the victims. And you know what red car that was. There is a
24 stipulation, a red Camry, red Toyota Camry registered to Julio
25 Camacho, a member of the crew, the defendant's cousin, the same

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Summation - Mr. Mukhi

1 red Camry that Javion Camacho and Jauncey Valle and the CW were
2 in when they arrived at one of those meetings at the McDonald's
3 to talk about the heroin robbery. It's the same car, ladies
4 and gentlemen.

5 Moral told you that the defendant was in a red Toyota,
6 and the victims said they saw a red car in front of them on the
7 night of the robbery. And you just saw it with your own eyes.

8 Let's go back.

9 (Video played)

10 Defendant's red Toyota driving by, the victims' van.
11 And there is the police car stopping right behind the van, and
12 there is Erickson Gilbert -- the same Erickson Gilbert who
13 walked into this courtroom, admitted he was a drug dealer, and
14 told you about the robbery from his perspective that night --
15 he is standing right there as the driver of the police car,
16 Alex Cespedes, told him to move, move because this street was
17 too busy to commit the robbery.

18 What happens next? Ladies and gentlemen, that car at
19 the top of the screen, that is the defendant's red Camry, and
20 it just looped back around. He dropped off Javion Camacho a
21 little further up the block, so Javion Camacho could walk down
22 and get into the police car so he could do the defendant's
23 dirty work, hold up the victims with the gun that the defendant
24 supplied that night.

25 How do you know? Let's keep playing.

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Summation - Mr. Mukhi

1 (Video played)

2 The top of the screen the red Camry drives back, and
3 look who follows: Javion Camacho walking from the north, from
4 the direction from where the red Camry came, to get into that
5 vehicle, that police car. That's what happened.

6 How else do you know that's what happened?

7 Mr. Gilbert testified that that's what happened. He told you.
8 He said when asked where did that man come from, the man who
9 gets into the police car, he answered: "There was a red car in
10 front of us that was blocking our way right halfway around the
11 block. He" -- the person that went into the police vehicle,
12 who you know is Javion Camacho -- "was coming exactly from the
13 direction from where this car was, from where the car had
14 parked ... " The red car.

15 Mr. Gilbert saw Javion Camacho walk away from a red
16 car, and you know from all the other evidence in this case that
17 was a red Toyota Camry that the defendant was driving that
18 night.

19 Now, by the way, there was a lot of cross-examination
20 of Mr. Gilbert about the fact that he only remembered the red
21 car yesterday before he testified. But what was the result of
22 all of that cross-examination? He just said the same thing
23 over and over again. No one suggested anything to him about
24 the red car, not Ms. Ynfante, not the government. He said no
25 one from the government had ever asked him about a red car

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Summation - Mr. Mukhi

1 before he testified. He remembered it on his own. He
2 remembered it as he was waiting to testify before you. He
3 remembered it as he was about to relive that night on the
4 witness stand, the night he was pulled over, thrown up against
5 the vehicle and thought about how if that robbery had taken
6 place two minutes later his two kids would have been inside.
7 As he was about to relive that nightmare, he remembered
8 something important, he remembered the red car.

9 And this is what Ms. Ynfante told you, same thing, the
10 red car was blocking their way. And, by the way, how do you
11 also know that Erickson Gilbert didn't get the red car idea
12 from Ms. Ynfante? Look at Ms. Ynfante's testimony:

13 "Q. Did you notice the red car first or Erickson notice the
14 red car first?"

15 Talking about the night of the robbery.

16 "A. Erickson was the one who saw it first, because I was
17 actually paying more attention to the car that was behind me."

18 Ladies and gentlemen, he was the one who originally
19 noticed the red car; he was the one who remembered it
20 yesterday.

21 Now, ladies and gentlemen, there was also some
22 suggestion that the victims were making up the red car. Just
23 think about it. Why would they do that? What do they have to
24 gain? Nothing. Not only do they have nothing to gain; they
25 know nothing about this case other than that they were victims.

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Summation - Mr. Mukhi

1 They didn't identify the defendant. They didn't know he was
2 the one in the red car. They didn't know for sure that the red
3 car was part of the robbery. They didn't, but you do. You
4 learned that that red Camry was used by the crew and was
5 registered to Julio Camacho. You learned that the defendant
6 was in the red Toyota that night. You saw the cell site
7 putting the defendant in Washington Heights around the corner
8 while the robbery was taking place. They didn't know that; you
9 do.

10 And, ladies and gentlemen, let's watch a little bit
11 more of the video, and pay attention to what the red Camry on
12 the other side of the street does as Javion Camacho approaches.

13 (Video played)

14 The car starts to creep away as Javion Camacho is
15 getting closer and closer, creeps away, creeps away. Javion
16 Camacho successfully into the car, and the red car takes off,
17 job done.

18 Ladies and gentlemen, you can use your own common
19 sense and your own observations. The defendant is making sure
20 that Kong gets into the police car just like he told him to.
21 He is checking the side mirror, rearview mirror, whatever,
22 waiting until Kong gets into the other car. Then he speeds
23 off, job done. That's what he wanted to have happen, Kong to
24 go into the police car so he could be the one to hold up the
25 victims with the gun.

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Summation - Mr. Mukhi

1 Where does the red Camry go? Where does the defendant
2 drive to then? He drives around the block, so, just as Moral
3 told you, he can block off the victims when the robbery takes
4 place on 171st Street.

5 On this block, ladies and gentlemen, 171st Street,
6 8:58 p.m. the robbery goes down. Moral told you, and the
7 victim told you -- victims. Moral, Cespedes and Kong pull over
8 the van with their lights and sirens. Kong has a gun on his
9 person. Alex grabs the woman, Escarly; and the two others,
10 Moral and Kong, go to get the man. They grabbed them, they
11 pushed them up against the car. Erickson's face is pushed so
12 he can't see. The whole time the defendant is up there boxing
13 the victims in with the red Toyota. Ladies and gentlemen,
14 there are no bars or restaurants on that block. That's a block
15 where a robbery took place.

16 Let's look at the chart of the defendant's phone
17 contacts with Kong that night. Starting at 8:45, around the
18 same time the defendant is on the phone constantly with Moral,
19 look at what happens approximately 8:44. There is a call,
20 there is a call, there is a call, there is a call. The robbery
21 is at 8:58 p.m. What happens during that time period before
22 it, after it and during it? What happens to the calls?
23 Silence, silence for 20 minutes. Why? Why the sudden silence?
24 You know why: They're doing the robbery. Kong is with the
25 victims; the defendant is blocking off the block.

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Summation - Mr. Mukhi

1 And what happens after? It picks up again after the
2 robbery. You know what's going on then too. The defendant is
3 the one who has to direct everyone to that warehouse area in
4 Kearny. He is the one who knew about it. He is the one who
5 took everyone there.

6 So, before we get to Kearny, let's just talk about the
7 gun. Where did the crew's gun come from that night? This is
8 where the gun came from, the black bag that the defendant
9 handed off that night to his partner in the cop car, the bag
10 that Moral felt and felt the gun.

11 And while we're on this, let me just point this out.
12 If Moral were going to come into this courtroom and lie -- like
13 defense counsel said he would in his opening statement --
14 wouldn't he actually just say I looked in the bag and I saw
15 there was a gun? He said he saw the gun later on Kong, but he
16 said I didn't look in the bag, I just felt the gun. But if he
17 was going to lie, he could have said I had a moment to myself
18 that night, I looked in the bag when no one was looking and I
19 saw a gun. That would pretty much be impossible to disprove.
20 Why didn't he say that? Why didn't he say I looked in the bag
21 and saw it? Because he wasn't here to lie; he was here to tell
22 the truth. And the truth was he knew it was a gun because he
23 felt it. And he knows what a gun feels like because he was a
24 member of that crew with the defendant.

25 Now, what did you find out about what the crew did

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Summation - Mr. Mukhi

1 with that gun that the defendant brought that night? Kong was
2 wearing the gun, and Moral could see the gun that Kong was
3 wearing. The victims also told you that they saw something
4 that they thought was a gun. They saw an object where a gun
5 would be and where you know Kong had a gun. So, there was a
6 gun there. And, ladies and gentlemen, it's just common sense
7 too, when someone does an armed -- when someone does a
8 robbery -- forget the armed -- if you are going to do a robbery
9 of someone who you think is a big time drug dealer, you are
10 going to bring a gun, this crew is going to bring a gun. And
11 you saw the arsenal of guns they had.

12 Now, let's talk a minute about the differences between
13 the victims' testimony on this. Ms. Ynfante remembers that it
14 was Kong who had the gun. She doesn't know Kong by name of
15 course, but she remembers the gun was on the second person, the
16 person who approached Erickson's side of the car. Not the
17 first person, Cespedes, who approaches her, and not the third
18 person, the person who took the car, you know that's Moral.
19 That's consistent with what Moral told you. It's also
20 consistent with the fact that Javion Camacho enters the police
21 car right then right before the robbery. He's the muscle.
22 That's why he is going to the car minutes before the robbery.
23 He is willing to show his face and threaten other people with a
24 gun.

25 Now, Erickson Gilbert remembered it differently. He

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Summation - Mr. Mukhi

1 said it was the guy who took the car who had the gun. That guy
2 we know is Moral. Moral and Ynfante say it was Kong and
3 Gilbert remembers it as Moral. Gilbert is mistaken on this.
4 Not only did Moral and Ynfante tell you otherwise, but you can
5 just use your common sense. It would make no sense for Moral
6 in the middle of the robbery to drive off with the crew's gun.
7 He would be leaving Kong and Alex without any guns and with the
8 victims who they were robbing, including someone they thought
9 was a major drug trafficker. It makes no sense that Moral
10 would drive off with the gun. He is going to the abandoned
11 warehouse, and Kong and Alex are staying with the victims.
12 Kong needs the gun at the scene.

13 Now, before we get to New Jersey, let's look at one
14 more thing. Ladies and gentlemen, all four of these men were
15 together at the crime scene while the crime was happening.
16 Investigator Donaldson and Special Agent Perry told you that
17 the Serrano phone, the Moral phones and the Cespedes phone were
18 all near 171st Street, including the minutes before, during and
19 after the robbery took place. You know Javion Camacho was
20 there because you saw him on the video. And they were also
21 constantly calling each other moments before the robbery.

22 Now, ladies and gentlemen, the government always
23 welcomes our burden of proof, and the defendant has absolutely
24 no burden. When the defense chooses to make assertions during
25 opening statements, and arguments during cross-examination,

E6J7SER1

Summation - Mr. Mukhi

1 it's perfectly appropriate for us to respond.

2 So, what does defense counsel ultimately want you to
3 do? He wants you to look here, here and here, not here, not
4 there. And he has to say that. They were all there. The
5 evidence is the same. If you look there, you will find him
6 guilty.

7 Now, what happens next? They all go to New Jersey
8 over the GW Bridge, Moral, Cespedes, both following Serrano's
9 lead to the abandoned warehouse. Serrano is in the red Camry,
10 Moral is in the stolen van, and Cespedes is with Kong in the
11 cop car. Then they arrive one by one in Kearny: The
12 defendant, 9:32; Moral, Kearny, 9:31 and 9:51; Alex Cespedes,
13 Kearny, 9:31.

14 Now, what was in Kearny? Moral told you about the
15 abandoned spot where they searched for the cocaine, and that
16 they didn't find it but they sure did look hard. The defendant
17 tore apart the car including tearing out the baby car seat to
18 look for the cocaine.

19 Now, even though they did not find the two kilos of
20 cocaine for this job, that is irrelevant for the crimes that
21 the defendant has been charged with. He is charged with
22 conspiring or agreeing to commit this robbery and to get that
23 cocaine to resell. I suspect the judge will instruct you that
24 for someone to be guilty of conspiracy, the conspiracy does not
25 actually need to succeed in its goal, in its objective. They

E6J7SER1

Summation - Mr. Mukhi

1 don't have to get what they were going after. The crime is
2 making the criminal agreement for the objective in the first
3 place.

4 Now, the information that the defendant was getting
5 from the lady tipster, it was slightly off. Right? They
6 thought Gilbert was a cocaine dealer. He is a heroin dealer.
7 They had information that Erickson would have drugs that night.
8 He didn't have them that night. But everything else was spot
9 on. They were a couple. They were in a van. They were in
10 Washington Heights. They were double parked outside of that
11 barber shop. And this is the information that the defendant
12 and his partners acted on that night when they agreed to commit
13 that cocaine robbery, so they could steal and sell the drugs
14 for themselves.

15 Now, by the way, while we are on this photograph, you
16 may remember Moral was cross examined about the distortion on
17 the power lines on this photograph and the electrical wires on
18 this photo don't line up, and I guess the implication was that
19 Moral or someone else had somehow manipulated this photograph.
20 Ladies and gentlemen, you heard the explanation for that.
21 These photos are from Google Maps. Google is a great company,
22 but did they put their best resources to take this picture of
23 the abandoned warehouse in Kearny? Maybe not. Does that mean
24 this place doesn't exist? No. Does it mean that the defendant
25 didn't go there with the rest of his crew like the cell site

E6J7SER1

Summation - Mr. Mukhi

1 shows to find cocaine? Of course not. It's exactly what they
2 did.

3 What did he do after? He went home. The defendant
4 went home to that tower, tower 254, the tower that Investigator
5 Donaldson testified was the closest tower to his house or his
6 cell phone provider.

7 And, ladies and gentlemen, look at the records the
8 next day. Where does the phone wake up? October 15 it wakes
9 up same place, 254. And who does the defendant call? Who does
10 he have contact with at 9:33 that morning? Kong. What were
11 they talking about? You know what they were talking about;
12 they were talking about what happened last night. Use your
13 common sense.

14 Now, ladies and gentlemen, let's just go back to New
15 York for a minute before we move on. Ladies and gentlemen, he
16 is at that tower, that tower 242, around the corner from the
17 robbery, calling from the direction of the robbery. What time
18 is he doing this, among the times he is doing this? 8:58 p.m.,
19 to the minute. What was he doing? He wasn't at the bar. He
20 wasn't at the club. He wasn't at the restaurant. Other than
21 these approximately 45 minutes less, you heard over the three
22 months of cell site there are no hits in Washington Heights for
23 that entire period. This is the only time, the only time he is
24 in Washington Heights, when the robbery is happening. It's not
25 a coincidence, ladies and gentlemen. He was at that robbery,

E6J7SER1

Summation - Mr. Mukhi

1 he was in the red Toyota, he was boxing in the victims while
2 Kong, Moral and Alex held them up with a gun. It's the same
3 people he spoke to more than 70 times that day. That's what he
4 was doing.

5 And, ladies and gentlemen, if you find, if you believe
6 he agreed to commit that armed robbery of cocaine on October
7 14, 2012 so he and his other robbers could resell it, he is
8 guilty of every count in the indictment. He is guilty of
9 conspiring to distribute narcotics, 500 grams or more of
10 cocaine. He is guilty of robbery, and he is guilty of carrying
11 or possessing that firearm that he handed to Kong which was
12 made known to those victims and was brandished.

13 Now, the defendant is also charged with heroin. This
14 one didn't involve heroin, but we will get to that next. But
15 before we do, if you find that he agreed to commit that
16 robbery, he is guilty of conspiring to distribute cocaine and
17 the robbery and the gun count, end of story, that robbery.

18 Now, let's talk about heroin and let's talk about
19 January 9, 2013. This is the massive heroin job, more than 20
20 kilos, the robbery you heard about the second most, after
21 October 14.

22 And why did you hear about it? Well, first of all
23 that's when a lot of the crew at least was taken down,
24 including the Camachos, Cespedes and Moral. But why else did
25 you hear about it? The defendant was in on it from the moment

E6J7SER1

Summation - Mr. Mukhi

1 it was born until the day it died on January 9, 2013. The
2 first day of what would become this robbery the defendant was
3 in on it.

4 Approximately one hour before Javion Camacho goes to
5 that first meeting with the CI, who does he talk to? The
6 defendant, partner in crime. What are they talking about?
7 What could they be talking about? Your common sense tells you
8 they are talking about the meeting that Kong is about to go to
9 about the new job with 20 keys of heroin. This is what they
10 did. Remember when Moral had that meeting, that first meeting
11 when he met Kong, he knew Chillina, and Chillini introduced him
12 to Kong? What did they say when Moral said I steal drugs?
13 They laughed. They said this is what we do.

14 How else do you know? Who is the next person that
15 Javion Camacho has contact with after the defendant? Almost
16 two minute call at 7:26 between the defendant and Javion
17 Camacho. 7:53, over two minute call with Javion Camacho and
18 the defendant. Next call, Jauncey Valle, the same Jauncey
19 Valle who then an hour later goes to the meeting with Javion
20 Camacho to talk about this, and Javion Camacho says, "I want
21 you to understand something, me and my team, this is what we
22 do. We play for keeps. We don't half-step nothing. If
23 anything get ugly, we make it real ugly ..."

24 So, what are they talking about during these calls?
25 They are talking about the robbery. How do you know that?

E6J7SER1

Summation - Mr. Mukhi

1 Because what happens after the meeting about the robbery?
2 Javion Camacho attempts to make a call to the defendant right
3 after he leaves that meeting. He is right over the Lincoln
4 Tunnel. He is right around where he drops off Jauncey Valle
5 and the CW, and he tries to call him. Why? Tell him what
6 happened the first day. Now, they don't reach each other on
7 that call. You see it's an attempted call. What happens two
8 days later? Cell site. Javion Camacho in the vicinity of
9 Anthony Serrano's house, on December 19, 2012, two days later.
10 Call standing over an hour.

11 And you also know Javion Camacho had the defendant on
12 his mind that day at that meeting. Look at what he talked
13 about. Ladies and gentlemen, if you look at that, it is almost
14 a play-by-play for the Washington Heights robbery. Look at
15 what he says last. He said there is someone who cuts the top
16 of the block off: Defendant. And then there is a car that
17 cuts the bottom of the block off: The police car.

18 They are also in contact with each other throughout
19 this period that Javion Camacho is meeting with the CI. 29
20 communications all going on while the CI is texting, calls with
21 the CI and CW between this period, Javion Camacho, Jauncey
22 Valle, it is all happening, these guys are in touch. Days
23 leading up to the final attempted robbery, 28 total
24 communications between the defendant and Javion Camacho.

25 (Continued on next page)

E6JAASER2

Summation - Mukhi

1 MR. MUKHI: The day before the robbery January 8,
2 2013, again, Javion Camacho he lives in Carteret, he doesn't
3 live in Jersey City, he's in the defendant's neighborhood.
4 Then what happens on the night of the robbery? 10:40 p.m.
5 Javion Camacho has tried to do the robbery. The DEA has
6 arrested him. Who tries to call him? The defendant. And who
7 else tries to call Javion Camacho, Jauncey Valle, the same
8 Jauncey Valle who is at three meetings with the CI. No one can
9 dispute he was involved with the planning of the robbery of
10 Kong and he doesn't show up, just like the defendant. He's the
11 other person frantically trying to call Javion Camacho on the
12 night of January 9, 2013.

13 Why are they calling? Why is Jauncey Valle calling?
14 Why is Anthony Serrano calling? They're calling to check-in.
15 They want to know what the take is, how much heroin are they
16 going to get. That's what Valle's doing. That's what the
17 defendant is doing. They both had a stake in this robbery.

18 Obviously, the defendant does not reach Javion Camacho
19 at this point because Javion Camacho is under arrest by the
20 DEA. So who does the defendant try to call next? Honesty
21 Julio Camacho. January 9, there's no answer for Javion
22 Camacho. Who does the defendant try next? Julio Camacho
23 another robber who is trying to rob the heroin stash on
24 January 9. He was in on this robbery, ladies and gentlemen.
25 It's not a coincidence.

E6JAASER2

Summation - Mukhi

1 Now, before we get to the defense's theme you heard
2 during the cross of Agent Riley that Serrano didn't actually
3 show up in the Bronx that night which we agree he was in New
4 Jersey trying to checkup with Javion Camacho and Julio Camacho
5 starting at 10:41 while they were under arrest. We did learn
6 that the defendant was originally supposed to come. Moral was
7 told by Kong that the defendant was going to be coming and he
8 was going to be coming with a cop. And why didn't he come?
9 You also heard Moral say that some of the other robbers didn't
10 want a real cop there. And so the defendant was not going to
11 come because the real cop wasn't invited.

12 Now, ladies and gentlemen, it's not surprising that he
13 didn't come. You heard the MO recording. That was his way of
14 doing things. He hung back he was the one around the corner.
15 He was the one that didn't want to be seen in that area. That
16 is what he said. I don't want to be seen in that area.

17 Now, let's talk about the paint job analogy that
18 Mr. de Castro made in his opening statement. Now, the way he
19 presented it was completely backwards. Yes, 16 guys show up to
20 this robbery. Think about it. If you're the boss, if you are
21 the CEO of a contracting company that person doesn't go out and
22 do every paint job. He sends his team. He sends his muscle.
23 He sends the 16 guys. We all know that that's what bosses do.
24 They make other people work for them.

25 Now, what was the difference between October 14, 2012

E6JAASER2

Summation - Mukhi

1 and January 9, 2013. Why did he go to one and why didn't he go
2 to the other? Here's the reason. For October 14, 2012 they
3 didn't have takes extra muscle. The robbery came together that
4 day. You heard about that. That day they got the tip and so
5 they all rushed to the city including the boss to get the job
6 done, just like you would expect. If there's an emergency, the
7 boss comes. But January 9 had been planned for nearly a month.
8 They had time to recruit and put together the team. They got
9 16 of them. They didn't need any more hands on deck. The boss
10 didn't come. They had the workers. The boss stayed home,
11 didn't take the risk of being in the area but he would get his
12 cut when the score happened. How do you know that? You saw
13 those calls, ladies and gentlemen. He called Javion. He
14 called Julio right after that robbery is supposed to go down.
15 That's not a coincidence.

16 Now, by the way, although he was a boss, that's not an
17 element to any of the crimes, OK. As long as he joined and
18 participated in those conspiracies whether he was a leader or a
19 follower he's guilty if he joined those conspiracies.

20 Now, defense counsel also referred to the crew as the
21 Camacho crew. Ladies and gentlemen, this crew didn't have a
22 name. It doesn't matter whether you call it the Camacho crew,
23 Serrano crew or the Moral crew, they didn't give out T-shirts
24 identifying themselves as the Camacho crew. They wore police
25 shirts. Whatever you want to call the crew the defendant was

E6JAASER2

Summation - Mukhi

1 in it and that's what's matters.

2 Now, let's talk about some of the other jobs.

3 By the way, Mr. de Castro suggested in his opening
4 statement that these calls on January 9 around this time could
5 have been a holiday. Ladies and gentlemen, there is no reason
6 that Anthony Serrano and Javion Camacho are wishing each other
7 a very belated Happy New Year and Merry Christmas 15 times on
8 January 9, 2013. They're talking about the robbery and that
9 it's going down that night. Let's go to Webster Avenue. This
10 is the heroin stash house in the Bronx where Moral and Cespedes
11 and Black get two kilos of heroin, one of which goes to the
12 defendant and he resells it. He pays Black \$10,000 upfront.
13 Moral says he got, approximately, three thousand from it. The
14 rest of the payment, the defendant also gave to Black once he
15 sold the entire kilo.

16 Now here is the hash house. How do you know this job
17 actually happened? Well, here is Moral October 6, 2012, near
18 the stash house. This is about a week before the October 14
19 robbery. There is Cespedes, also same area near the stash
20 house October 6, 2012, around the same time. So, now what
21 happened to that kilogram of heroin that Cespedes, Moral and
22 Black got to keep? They got to keep one. Well, Moral told you
23 Black arranged for the kilo to be sold for the defendant for a
24 price that the defendant negotiated, his \$10,000 upfront. That
25 was the meeting where the heroin was given to the defendant so

E6JAASER2

Summation - Mukhi

1 he could resell it and it was a meeting where Moral met Kong
2 for the first time through the defendant.

3 Now, what else happened during this meeting? Moral
4 tells the defendant how he got the heroin and the defendant
5 says he wants in, OK. Webster Avenue, October 6, 2012, they
6 have this conversation and eight days later they're in
7 Washington Heights doing a robbery together. You know that
8 happened because we went through the evidence of Moral and the
9 rest of the independent evidence.

10 Now, let's talk about Moral for a minute and defense
11 counsel attacked his credibility in opening statement and
12 crossed him extensively on his credibility including his past
13 crimes, the murder, violating the source agreement, no doubt he
14 has done bad things. He has lied in the past. There's no
15 dispute as to that. But what is the difference now? Well,
16 Moral told you, he told you that his incentives have never been
17 to tell the truth. Obviously, he was running free. And now
18 he's in jail facing 17 years, mandatory minimum and the only
19 thing that can get him out is if he cooperates truthfully.

20 But you know what? In this case the cooperator is
21 also completely corroborated on everything. Staying with the
22 Webster Avenue job, the heroin job, here is the text message
23 that Moral sends to Serrano. What does Moral say? We got it
24 at 55. Yo, got it at 55, same thing you got last but better.
25 Last. What is the last time? The last time at Webster Avenue.

E6JAASER2

Summation - Mukhi

1 How do you know this is also about heroin? You heard, heroin
2 is approximately \$55 per gram. They're talking about this new
3 heroin that Moral got, the same heroin that you saw earlier.
4 Moral stole it from Queens and he spoke to the defendant about
5 it over the phone.

6 Now, the defendant doesn't text back but Black
7 responds even though Moral had not sent Black the text message,
8 he sent the defendant's text message and Black responds. What
9 are you talking about, dog food? They are not talking about
10 dog food, ladies and gentlemen. They're talking about heroin.
11 By the way the exchange here corroborates Moral's testimony
12 about Black acting as a middleman for the defendant. He's
13 doing it again for this January 7 deal just like he did for
14 Webster Avenue, a kilogram deal. So he saw Webster Avenue was
15 October 6 and Moral told you that Black was in the middle
16 selling a kilo to Chillini. What is going on in the phone
17 contacts between Serrano and Suarez during that same time
18 period? They're in touch. What are they talking about? The
19 one kilo that the defendant gave him \$10,000 upfront still
20 needed to pay on the back.

21 How else is Moral corroborated? Well, remember he
22 told you right before the Washington Heights robbery he met
23 with Chillini in Little League field and you know there's a
24 field right down the block from that house. That's where the
25 discussed tapes that were going in and the defendant said he

E6JAASER2

Summation - Mukhi

1 could take care of the gun. Here is Moral and Cespedes in the
2 vicinity of the defendant's home two days before October 14,
3 2012 on that robbery.

4 Now, Moral also told you that he went on at least one
5 other occasion with Cespedes to defendant's house and here they
6 are October 18 a few days later. The phones, Moral, Cespedes,
7 Anthony Serrano all around 348 Eight Street. Now, Moral also
8 told you about an attempted robbery of a cash van, a van that
9 was carrying drug money. This is the location Anthony Avenue
10 in the Bronx, OK. Here it is on November 12, 12:13 a.m. Julio
11 Camacho. Anthony Avenue is all the way to the right. Who is
12 in the same location approximately the same time? Alex
13 Cespedes is calling Victor Moral. Who is also there Victor
14 Moral. All thee of them, Jersey guys, in this same location
15 where he strapped the GPS onto the van. Now, what did Moral
16 tell you about that job? He said the defendant was supposed to
17 show up but instead Julio and Kong showed up, that the
18 defendant sent them instead of him.

19 So, what do you see the might before? Actually, the
20 same night cause they're there in the middle of the night.
21 This is approximately eight/nine p.m. on November 11 Serrano's
22 calling Julio Camacho. Then they're all by the cash van spot a
23 couple hours later. He is telling him, go, you go.

24 Now, ladies and gentlemen, let's talk about the heroin
25 sales.

E6JAASER2

Summation - Mukhi

1 THE COURT: Mr. Mukhi, before you starts there, is now
2 a time to take a break or is there a more logical point in a
3 few minutes?

4 MR. MUKHI: This is fine. I probably have about 15
5 more minutes left.

6 THE COURT: All right. Ladies and gentlemen, we'll
7 take a break and just a few minutes then come back and then
8 hear the remainder from Mr. Mukhi. Then we're going to go on
9 to Mr. de Castro and then the government has an opportunity for
10 a rebuttal after that just to give you a sense of how it plays
11 out.

12 I want to remind you again not to talk to each other
13 about this case or to talk to anybody else on social network or
14 anything else.

15 (Jury not present)

16 THE COURT: Is there anything that anybody needs to
17 raise before we take our own brief break?

18 MS. MAIMIN: No, your Honor.

19 THE COURT: It won't be long. And after Mr. Mukhi
20 you've got about 15 minutes left, then we'll go to Mr. de
21 Castro then depending upon how long that goes we'll come back
22 and do the rebuttal immediately or we'll take another break.

23 (Recess)

24 THE COURT: All right. Let's bring out the jury.

25 (Jury present)

E6JAASER2

Summation - Mukhi

1 THE COURT: Mr. Mukhi, you may continue, sir.

2 MR. MUKHI: Thank you, your Honor.

3 OK. Just one final point before moving on to the
4 heroin sales on Moral. One final point on Moral on how it is
5 corroborated by everything you've seen and heard. What did
6 Moral tell you about one of those meetings we saw at the
7 defendant's house? The defendant introduced him to who Moral
8 thought was a cop, a cop who had a drug sniffing dog who could
9 help with drug robberies. He identified Lou Faconne. He
10 didn't know his name but knew that the defendant had introduced
11 him to Moral as a cop with a drug sniffing dog. What happens
12 when agents go to arrest the defendant and go inside his
13 building? Lou Faconne shows up with a dog and a gun and it
14 turns out it's not a cop but he's a bail bondsman.

15 Ladies and gentlemen, you can't make that stuff up.
16 That's because it happened. Moral went to that meeting at the
17 defendant's house. He met the guy, the cop who he thought was
18 a cop and the cop was Lou Faconne. That's how corroboration
19 works.

20 Now, let's go to the heroin sales.

21 Heres what you learned on the first day of this case.
22 Four sales of heroin by the defendant out of his house where
23 house and car and it was Michael Gamba who brought in the
24 customers who were really important. What did the agents see
25 each time? They all testified in a row and they saw different

E6JAASER2

Summation - Mukhi

1 things on different days because that's how the surveillance
2 works. Sometimes it's one agent who sees the important
3 transaction, sometimes it's another agent. That's a fluid
4 situation. But each of them on each of those days saw the
5 important thing which is that when Michael Gamba wanted to get
6 heroin at the request of an informant he went to the defendant.
7 December 20, 2012, 30 envelopes stamped "Fat Lady";
8 December 27, 2012, 30 envelopes stamped "Fat Lady"; January 4,
9 30 envelopes stamped "Harlem Nights", January 16, 2013, 50
10 envelopes "Fat Lady".

11 Now, what did those agents see? They all saw
12 something very similar. Now, it was boom, boom with Serrano
13 and Gamba inside the door to the house, 30 seconds, a minute
14 inside the car. What else were they doing there. They were
15 exchanging drugs. They were exchanging heroin. Now, there was
16 cross-examination and the point was, basically, agents can't
17 see through walls and cars, correct? But, ladies and
18 gentlemen, you know what happened? No need to see through
19 walls. You don't need to see through cars. Michael Gamba came
20 to Chillini each time to get the heroin he needed. They met
21 quickly discretely every time Gamba got heroin.

22 By the way, it also fits with the Defendant's MO, a
23 layer, a layer of reduce my risk. Here, the layer is Michael
24 Gamba. Now, how else do you know that Serrano was Gamba's
25 supplier on those days? Well, you had the phone calls from

E6JAASER2

Summation - Mukhi

1 those two days around the time that Gamba was getting the
2 heroin from the defendant and then you have the cell site
3 records that on these days that agents observed Michael Gamba
4 and Anthony Serrano meeting during those controlled buy
5 operations in the vicinity of the defendant's house he was
6 home. He wasn't somewhere else. He was home. He was
7 supplying Gamba with heroin.

8 Now, how do you know that this is the same heroin that
9 the defendant was dealing with this crew? Well, look at that
10 first transaction there December 20, 2012. Three days earlier
11 December 17, 2012, Javion Camacho in the McDonald's CI, what
12 does he tell the CI? We're dealing with dope right now. He's
13 talking about dope. He's talking about heroin. he's talking
14 about how potent it is. You know when he says we're dealing
15 with dope right now you know who that is. You know who's in
16 the "we". Ladies and gentlemen, the 6597 number, the same
17 number that Javion Camacho is using with the CI to set-up the
18 drug robbery he is talking constantly with the defendant.

19 Now, this phone, the phone that Camacho's using on
20 October 14, that phone, that robbery he cuts it off about a
21 week later but that's the phone he has on the night of the
22 robbery. Now, the question is if everyone agrees that Javion
23 Camacho is a heroin dealer and an armed robber the question is
24 why is Anthony Serrano talking to him almost every single day?
25 It's not because they're cousins. It's because they sell drugs

E6JAASER2

Summation - Mukhi

1 and they rob drug dealers together and all of the evidence in
2 this trial has shown that.

3 Now, ladies and gentlemen, I want to briefly go over
4 the charges in this case. This is the verdict form that we
5 expect you'll get once you begin your deliberations. Count One
6 is a narcotics count. Pretty simple, was there an agreement to
7 distribute narcotics in particular heroin and/or cocaine? Yes.
8 Now, if you find that, then you'll be asked to make a finding
9 about the amount of cocaine, the amount of heroin or both.

10 Let me just address the weight issue right now. For
11 the heroin you know days greater than one kilogram both from
12 the January 9 attempted robbery which is more than 20 we'll put
13 that aside even but one kilogram, approximately, that the
14 defendant gets from Webster Avenue burglary up in the Bronx
15 right there you're above one kilogram. We're not even talking
16 about the heroin that came out of the defendant's home in
17 December and January, December of 2012 and January of 2013.

18 Now, for cocaine, the October 14 robbery, was Serrano
19 agreeing to obtain two kilograms of cocaine and to redistribute
20 it, two kilograms is well above 500 grams. Now the second
21 count is a robbery count. That's what you'd expect, exactly
22 what happened October 14, 2012, for example. Now you are going
23 to hear there's a requirement that the robbery affected
24 interstate commerce. The parties have stipulated in Government
25 Exhibit 805 that heroin and cocaine aren't grown in New York,

E6JAASER2

Summation - Mukhi

1 so by definition a conspiracy to rob those narcotics affects
2 interstate commerce. October 14 robbery was a cocaine robbery.
3 And the January 9 attempted robbery was a heroin robbery.

4 Finally, the last count is the gun count. Also
5 straightforward did he carry or possess a firearm in connection
6 with those other two crimes? And if you find him guilty of
7 that and you'll get the specific instructions from the judge
8 before your deliberations you should follow those. But if you
9 find him guilty of that count of the possession or the
10 carrying, then you are going to be asked to decide whether the
11 gun was brandished.

12 Now, I expect you'll hear that for this element the
13 gun doesn't have to be directly visible, doesn't have to be
14 pointed in someone's face as long as the gun was made known to
15 the victims and it was done to intimidate the victims. Here
16 there was a gun and Gilbert and Infante each saw something or a
17 gesture that they thought could be a gun and they told you what
18 they thought about that. They were scared. They were
19 intimidated.

20 Now, you are also going to hear that the defendant is
21 charged with aiding and abetting the Count One crime which
22 requires that he had advanced knowledge about the gun. Here
23 you know he did it because he's the one who brought the gun.

24 All right, ladies and gentlemen, I am going to sit
25 down but I just want to finish on where we started, the MO

E6JAASER2

Summation - Mukhi

1 recording. The recording that was introduced solely as it
2 relates to its modus operandi, it's a way of doing and planning
3 things. What did he say? He said, I don't get my hands dirty.
4 I am the guy around corner. I don't want to be seen in that
5 area. Why? Why? He thought because if he never showed his
6 face he would never get caught. He would tell law enforcement
7 what he told Special Agent Todd Riley, I didn't do robberies.
8 I wasn't at any robberies and you can't prove it.

9 Now, ladies and gentlemen, there's some things that
10 the defendant did not count on. He did not count on one of his
11 partners flipping against him. He didn't count on the fact
12 that that partner, Victor Moral, would be corroborated in every
13 way, the cell site, the phone records, everything that puts the
14 defendant at that robbery with the other robbers on October 14,
15 2012, and he didn't count on that recording. He didn't count
16 that there would be a recording where he explains how he
17 operates his MO.

18 So, ladies and gentlemen, when the defendant told the
19 agents he didn't do robberies, he wasn't at any robberies and
20 they couldn't prove any robberies, he lied and he was wrong.
21 He lied because he did robberies. He was at robberies and he
22 was wrong. He was wrong because we proved it.

23 THE COURT: All right. Thank you.

24 Mr. de Castro.

25 MR. DE CASTRO: May it please the Court, government,

E6JAASER2

Summation - de Castro

1 ladies and gentlemen of the jury, good morning.

2 On Monday afternoon I delivered my opening statement
3 and I told you that this case was about one man. I told you it
4 was about Victor Moral. And you heard Mr. Mukhi talk about the
5 mountain of evidence, the iceberg and he did that to suggest
6 that Moral was not the most crucial witness in this case. He
7 is the most crucial witness in this case, if they could just
8 rely on cell site evidence they would, but they can't. Each
9 count in the indictment turns on the truthfulness of
10 Mr. Moral's testimony.

11 Count One depends on whether he truthfully testified
12 that he was engaged in narcotics transactions with Mr. Serrano
13 and that some act in those transactions was committed in
14 furtherance or in the Southern District of New York.

15 Count Two depends on whether Mr. Moral truthfully
16 testified that Mr. Serrano was a member of the Javion Camacho
17 crew.

18 Count Three depends on whether Mr. Moral truthfully
19 testified about Mr. Serrano's membership in that crew and
20 whether he aided and abetted the use of a gun in furtherance of
21 that conspiracy.

22 We submit that you should disregard Mr. Moral's
23 testimony as is your right and find Mr. Serrano not guilty of
24 all these charges. I think it's fair to say that Mr. Moral's
25 testimony was extraordinary. So extraordinary that you, the

E6JAASER2

Summation - de Castro

1 jury, could disregard his entire testimony. He simply is not
2 believable. Admitted to you that when he gets caught his way
3 of dealing with things is to try to lie to get out of trouble.
4 Well, he got caught and what is he doing? Trying to lie to get
5 out of trouble. He's lied to juries before. He's lied to
6 courts before. After he gets arrested his MO is very simple,
7 deny, deny, deny. And when they have enough evidence cooperate
8 against anyone and anybody and try and limit your exposure.
9 He'll say whatever he has to say to get the benefits of his
10 cooperation agreement and he told you that he wants a 5K
11 letter. He wants the government, this government to conclude
12 that he's provided substantial assistance in the prosecution of
13 others. If they conclude that, he will get his letter and a
14 judge will be permitted to sentence him below 17 years.

15 He is shooting for the lowest possible sentence
16 because he was already sentenced in New Jersey. He got seven
17 years and it's already been determined that that will be
18 concurrent to whatever he receives in this courthouse. That's
19 a pretty good deal and he told you from the stand that he's
20 hoping to get time-served. He told you he's hoping to get
21 time-served after having a proven track record, a proven MO
22 that is to lie to the law enforcement, lie to courts and lie to
23 people like you jurors.

24 As I said in my opening, don't allow Mr. Victor Moral
25 to manipulate you like he's manipulated countless others. And

E6JAASER2

Summation - de Castro

1 if you are asking yourself now when you are sitting there after
2 this hearing is adjourned, after Mr. Muhki's summation, why
3 would he lie? I think the real question should be asking is
4 why would he tell the truth? Why would he deviate from his
5 normal practice? His normal practice is to lie. It's what he
6 does to every person he comes in contact with. So what is
7 different that would make him tell the truth? Because he is a
8 facing time. He lied to New Jersey State Police. He's facing
9 time there too. That's seven years there, right?

10 He told you that he was willing to lie and commit
11 upwards of 30 crimes, 30 crimes. We're talking about crimes
12 with guns and tying people up. I went through a list. I am
13 sorry. It was very painful, I know but I went through the list
14 of all those crimes. And he committed all those crimes after
15 signing Defense Exhibit One which is his agreement with the New
16 Jersey State Police. Look at that when you go back in the jury
17 room. See what he agreed not to do and you'll see what he did.

18 Now, undoubtedly -- well, actually, the government did
19 argue already that, well, if Mr. Moral was lying when he was in
20 this courtroom he would have done a better job of it. Oh, well
21 the cooperator's is lying. He would have said something like
22 the gun is right here in the bag or do you know what? Do you
23 know who gave us the guns for January 9? Oh, it was
24 Mr. Serrano. That's exactly what he did. That's exactly what
25 he did. He gets arrested on January 9th of 2013. He starts

E6JAASER2

Summation - de Castro

1 proffering with the government. He doesn't tell the government
2 until May of 2014, last month he tells the government oh,
3 Mr. Serrano gave the guns for that robbery. Mr. Serrano was
4 arrested in August of 2013.

5 The explanation in the questioning was oh, well, it
6 was never asked. Ask yourselves if that makes any sense. He
7 proffered with the government, approximately, 40 times
8 according to his testimony. Mr. Serrano was arrested in August
9 of 2013. It simply defies common sense that he was not asked
10 about the October 14, 2012 robbery. He wasn't asked if there
11 was a gun there? He wasn't asked who brought the gun?

12 The government argues that Mr. Serrano is the
13 mastermind. They just argued that he is the mastermind. He is
14 the puppet master pulling all the strings. In fact, Mr. Mukhi
15 was saying he's like the CEO, equivalent of CEO of a business
16 that is doing -- why? Because I made that reference in my
17 opening statement to the painting job. I'll tell you why my
18 painter goes to that job. Because that's the big job and that
19 painter wants to talk to that client. Little clients, they are
20 not going to talk to as much. The CEO does not meet with every
21 client, every business person. They meet with the bigger
22 people.

23 Let me talk to a little bit about why the government's
24 argument that he is the mastermind, the boss behind this makes
25 no sense. Would a mastermind have one phone registered in his

E6JAASER2

Summation - de Castro

1 wife's name? No. I submit to you he would have multiple
2 phones. He would use different phones for different purposes.
3 Why do I think that? Oh, I forgot, because the witness
4 testified to it. The lead of a robbery crew testified that you
5 have multiple phones, he uses them, he passes them out and he
6 has them regimented for different types of jobs. That's what
7 Victor Moral told you. He got arrested in New Jersey. How
8 many phones? Three. He got arrest here. How many phones did
9 he have? You saw the charts Victor Moral, Victor Moral, Victor
10 Moral.

11 He even testified that at times he had four or five
12 phones at one time. Ask yourselves if this makes sense that he
13 would have one phone, keep the same number the entire time and
14 when he's the puppet master and involved in all of these
15 crimes? Would a mastermind not realize the cellphone cell site
16 records exist and they could estimate a location? It's not a
17 secret. Would a mastermind openly associated with somebody
18 like Mike Gamba in broad daylight and deal drugs right there
19 from his home? Would the mastermind live in a fourth floor
20 walk-up? Would he be driving that older model Lexus instead?
21 No. He would be driving what Victor Moral drives Escalade,
22 BMWs, Mercedes and Maserati. Would a mastermind openly discuss
23 what you heard yesterday how he was broke and desperate and was
24 working with a pizza shop employee to try to steal watches from
25 the boss? That's the mastermind.

E6JAASER2

Summation - de Castro

1 The truth is the facts show that Moral from that stand
2 downplayed his role as one of the real leaders and the real
3 leaders of the crew were Javion, Julio and Mr. Moral. He tried
4 to make it seem like he was just in charge of picking up
5 equipment and being a lookout. That's what he did on direct
6 examination. On cross-examination he's agreeing with me that
7 he is the leader. We even saw those text messages that
8 Mr. Mukhi was referencing between Black and Wilfredo Suarez and
9 Mr. Moral. What did he say when I asked him a question? You
10 are like his boss? Yeah, you can say that. That's a leader.
11 The leader gets the car, the cop car. The leader buys it. The
12 leader tricks it out. The leader parks it. The leader has all
13 the equipment. The leader gets text messages from people like
14 Suarez practically begging them not to cut them out of future
15 work.

16 On cross-examination what did he admit? He puts
17 robbery crews together. He was the organizer. He put together
18 crews to commit robberies in Connecticut. He put together
19 crews to commit robberies in New York. He put together crews
20 to commit robberies in New Jersey. And he put together crews
21 to commit robberies in Pennsylvania. After the that theft he
22 would commit he would arrange to sell the car. He had all the
23 contacts. He was on both sides of everything. And he said he
24 was making money, lots of it. \$1000 a pound for marijuana is
25 what he testified to and he was testified to stealing 300

E6JAASER2

Summation - de Castro

1 pounds of marijuanas. That's one of the more than 25 crimes he
2 committed in 2012 alone.

3 So, why does this case turn on Victor Moral? Well,
4 with respect to the narcotics conspiracy part which is Count
5 One of the indictment, the government alleges that Mr. Serrano
6 agreed with at least one other to violate these narcotics laws
7 from 2012 to 2013 that he knowingly participated in that
8 conspiracy and that enactment in furtherance of conspiracy
9 occurred within the Southern District of New York.

10 You heard two categories of evidence. You heard the
11 Gamba evidence that Mr. Mukhi was just talking about and you
12 heard testimony from Mr. Moral that he, Mr. Serrano and others
13 agreed to possess the cocaine and heroin.

14 Let's talk about the Gamba evidence a little bit. You
15 heard evidence of those sales, sales between Mike Gamba and
16 government informants. And the government got a little queue
17 saying oh, I saw the deal between Mr. Serrano and Mr. Gamba but
18 then I on cross-examination, no, they never saw anybody change,
19 anything change hands. They never saw them even shake hands.
20 Mr. Mukhi says, well, they do things really fast, OK. Well,
21 they didn't note what the person was wearing. They have no
22 idea whether Mr. Gamba walked out of his own apartment and had
23 that little bag, these little bags in his pocket, no idea.
24 They want you to assume that.

25 All the sales occurred between government informants

E6JAASER2

Summation - de Castro

1 and Mr. Gamba. The government's only evidence of Mr. Serrano's
2 involvement were these few brief in-person meetings with him
3 after which at some point Mr. Gamba delivered heroin to an
4 individual working with the government. There's absolutely no
5 evidence of Mr. Serrano and Mr. Gamba delivering anything.
6 There is no evidence from Agents -- Kolakowski or Kealy that
7 they ever observed narcotics exchange hands between Mr. Serrano
8 and Mr. Gamba.

9 On direct they made it appear that if Gamba gets an
10 order each time what does he do? Oh, each time he goes and I
11 think Mr. Mukhi just was talking about that, each time he goes
12 to see Mr. Serrano and then they did that on direct. But they
13 just left one out, so I did it on cross-examination which was
14 February 14 where they made an order and Mr. Gamba delivered
15 heroin and they watched it and went in the Barge Inn, came out
16 and gave the heroin. That was it. No Mr. Serrano.

17 So, Gamba doesn't by himself does not establish the
18 conspiracy charge in the indictment. For one, even if you
19 credit the government's evidence and made that leap they want
20 you to make the leap that it must be those drugs. Those deals
21 in and of themselves would be insufficient to establish the
22 conspiracy charge of the indictment.

23 But just those deals aren't enough so guess who fixes
24 it? Victor Moral. He's got to get on the stand. He solves
25 their problem by testifying, just like he solved their problem

E6JAASER2

Summation - de Castro

1 in May of 2014. Now, all of sudden Mr. Serrano provided the
2 gun for that one particular robbery, the gun that none of the
3 victims saw. The robbery conspiracy depends on Mr. Moral's
4 claim that Mr. Serrano was a part of Javion Camacho crew. All
5 the cell site evidence in the world will not establish
6 Mr. Serrano or anybody anyone else's -- victims or
7 co-conspirator. That's why they need Mr. Moral. Can't just
8 put on the cell site information because if I was in that area
9 and wasn't committing a robbery.

10 The government alleges that Mr. Serrano carried a
11 firearm during that or aided and abetted during that
12 October 14, robbery. Other than Mr. Moral, there is no
13 evidence that Mr. Serrano carried or aided and abetted the
14 carrying and use of a firearm in connection with October 24,
15 2012 robbery. Therefore, like Counts One, Counts Two and Count
16 Three, all the counts depended on Mr. Moral. They depended on
17 him. That's why I said this is all about Victor Moral. You
18 watched him testify. You judge his credibility.

19 I told you in openings that we do not deny the
20 existence of the Javion Camacho crew and I keep saying Javion
21 Camacho crew. I am not doing that because it's me being
22 tricky. It's in the transcripts. Javion Camacho saying "my
23 team". Who else is saying "my team"? Then if you don't want
24 to call it the Javion crew, fine. I'll call it the Victor
25 Moral crew. Because he says "my crew" to.

E6JAASER2

Summation - de Castro

1 I told you in openings that the questions for you
2 would be who is a member of this robbery conspiracy or this
3 crew charged in the indictment? Where was Anthony Serrano on
4 January 9, 2013? I told you you have to ask yourselves that
5 and you still have to ask yourselves that. How do you know if
6 it's the Javion Camacho crew? One, Javion Camacho told you.
7 Victor Moral told you. Anthony Serrano told you. And all the
8 facts of January 9, 2013 told you that. How did Javion Camacho
9 tell you that it was his crew? All the calls record texts
10 leading up to January 9, all him. Mr. Serrano as I did not
11 mention any of those calls by the messages, December 17th of
12 2012, Javion Camacho and the CI that's I think Government
13 Exhibit 301. Javion says me and my team, this is what we did.
14 His team. His crew. January 9, 2013 Javion and the informant.
15 I brought my team.

16 Mr. Serrano tells me himself the government introduced
17 that recording yesterday right at the end of the day. And that
18 was the recording where Mr. Serrano was talking about watches
19 and the pizza shop owner and the government is saying oh, he's
20 talking about his MO, his crew, I guess, right? So, it's his
21 crew. Well, that was in July of 2013. He's talking about that
22 crew and he does say "our MO" the whole Camacho crew got
23 arrested on January 9. They're all in jail so I'm not really
24 understanding that. All January 9, 2013 tells you that this is
25 the Javion Camacho crew not the Serrano crew.

E6JAASER2

Summation - de Castro

1 December 14th of 2014, meeting with the cooperating
2 witness and Mr. Valle; December 17, 2012 meeting with the
3 cooperating witness, the cooperating source Jauncey Valle and
4 Camacho; 34 Street McDonald's you saw it, you did not see
5 Mr. Serrano; December 24 Christmas Eve there was a call.
6 Mr. Serrano was not on the call; January 2, meeting at
7 McDonald's on 34th Street, some unknown female shows up.
8 Mr. Serrano is not present. The boss, and we're talking about
9 this huge amount of drugs, bigger than anything they've ever
10 done before, you'd think the boss may show up now to do the
11 real negotiating. The day of the sting operation Javion and
12 confidential informant, this a telephone call. Mr. Serrano is
13 not on the call. January 9, the day of the meeting, they
14 didn't bring that out on direct-examination. They waited for
15 me to bring it out on cross. They had their own meeting in a
16 parking lot. The crew got together to do this meeting in the
17 parking lot and that was surveilled. And the agent said
18 Serrano was not there. And then the arrests January 9 who
19 showed up in the cop car and everything else? Who had all the
20 gear? Shockingly, Victor Moral. Anthony Serrano was not
21 present.

22 Now, on Count Three of the indictment pretty much for
23 the reasons I've stated so far, the government really hasn't
24 proven that the narcotics or robbery conspiracy beyond a
25 reasonable doubt. However, if you were to conclude that

E6JAASER2

Summation - de Castro

1 Mr. Serrano was guilty of either previous conspiracy you would
2 turn to Count Three if you turned to this firearm issue. And
3 you heard testimony from Mr. Perez and Infante yesterday and
4 they weren't -- about some things. But they were consistent
5 about one crucial fact. Both victims told you they didn't see
6 a gun. Mr. Perez said he saw one of the robberies put his hand
7 under his arm. Ms. Infante said she that she a bulge on the
8 hip of one of the robbers. Neither one of them would commit
9 that they saw a firearm. They weren't in fear that they saw a
10 gun. They were in fear because they were having an interaction
11 with what they thought were police and a few seconds later
12 those robbers were gone and so was their car.

13 Now, Mr. Mukhi put up on the slide there was this
14 testimony -- I think it was transcript page 344 of the record.
15 And you know you could have anything read back. If you want
16 the testimony of any of the people we could read it back. An
17 just send a note back and the judge will ask the parties to get
18 it together. And that testimony was from Mr. Moral and it says
19 that the part that they cut out of the clip was that he said
20 the person had a gun in his vest. So the person was wearing, a
21 bullet proof vest, had a gun in the vest. And on cross at page
22 661 Mr. Perez says, I didn't see a gun. Ms. Infante says, I
23 never saw a gun, on page 677.

24 But like the previous counts, Victor Moral's testimony
25 is the only link. Again, he's here to fix it. He didn't tell

E6JAASER2

Summation - de Castro

1 prosecutors until a month ago that Mr. Serrano allegedly
2 provided the gun for that and he proffered more than around 40
3 times, he said.

4 (Continued on next page)

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E6J7SER3

Summation - Mr. De Castro

1 Now, that tape, I want to address that tape that was
2 yesterday for a second. How does that tape figure into this
3 case? Well, you heard from the judge yesterday about it. You
4 will hear about it in the judge's instructions as well. That
5 evidence was admitted by the government, but it really can't be
6 used to conclude that Mr. Serrano has committed the crimes
7 charged in the indictment. It was admitted for a very limited
8 purpose, and you should pay close attention to the charge on
9 the subject.

10 But that evidence in and of itself, that evidence
11 doesn't prove that Mr. Serrano was involved in selling
12 narcotics that were stolen in robberies in New York, drug
13 dealers in New York. It doesn't do that at all. It doesn't
14 prove for sure that Mr. Serrano was a member of the Javion
15 Camacho crew that robbed drug dealers or that they used guns to
16 rob drug dealers. It has nothing to do with those allegations
17 at all. Sure, it sounds really bad, but it's really irrelevant
18 to the charge of conspiracy. They are using it to say it's his
19 MO, it's his MO, it's his MO.

20 The government introduced all of this cell site
21 evidence of Mr. Serrano's estimated possible locations on
22 October 14, 2012 as well as those of alleged coconspirators
23 around the robbery of Ms. Ynfante and Mr. Perez. And I know
24 those records, they seem very damaging, but keep in mind that
25 alone they don't prove anything; they're not everything that

E6J7SER3

Summation - Mr. De Castro

1 the government wants them to be. They want them to be
2 everything because they want to shy away from Victor Moral.
3 That's why that entire summation was, oh, he's corroborated,
4 corroborated, corroborated. Because what does he do? He is a
5 liar; that's just what he does. That's what he told you. I'm
6 not characterizing it. He actually told you.

7 Those charts are created by putting data from phone
8 bills to make an estimate of a location of a cell phone at a
9 particular date and time. The technology is great, but it's
10 not advanced enough yet to say where people are, what they're
11 doing.

12 And I want to remind you that we don't have to prove
13 where we were. The government has the burden here to prove
14 this case beyond a reasonable doubt. So, any suggestion in the
15 summation that, oh, well, there is no explanation for where he
16 is, like we have to explain it, we don't have to do that.
17 Listen to the charge; it's very important on that subject.

18 Any and all of those maps, they could be off by miles.
19 There is a radius for everything.

20 Couple that with the testimony of Victor Moral that
21 cannot be relied upon, and that is going to lead to a
22 reasonable doubt for you just as it relates to October 14.

23 The government has introduced charts. You have heard
24 testimony regarding toll records and calls between Mr. Serrano
25 and who they allege to be all the other coconspirators.

E6J7SER3

Summation - Mr. De Castro

1 Mr. Mukhi was just talking about calls between Mr. Serrano and
2 Javion Camacho. Most instances they are Mr. Serrano and Javion
3 Camacho or Julio Camacho. They are his cousins. The fact that
4 they're making calls or sending texts to family members is in
5 and of itself evidence of nothing.

6 Mr. Mukhi made a lot of assumptions when he was
7 summing up here to you about conversations they were having.
8 You didn't hear any of those conversations. You can't just
9 conclude they talked about this. He gave you the impression he
10 knew what they were talking about simply based on the timing.
11 He may be close to his cousins, and it's not in shock that they
12 would be in contact a lot.

13 Now, this has been a very short trial; it's not been
14 very long. And I want to thank you for your time. It's been
15 this week. I want to thank you on behalf of Ms. Serrano, Ms.
16 Gotlib and I. We appreciate you putting your life aside to
17 serve. You have been attentive and focused, and we thank you
18 for that.

19 It's clear that you are taking your responsibility
20 very seriously, and as it was when this trial started, Mr.
21 Serrano is cloaked with the presumption of innocence. He still
22 has that. They still have to prove their case beyond a
23 reasonable doubt.

24 They have a high burden. And because of the extremely
25 high consequences and dire consequences that flow from a

E6J7SER3

Summation - Mr. De Castro

1 criminal conviction, the high burden of proof also protects you
2 so you don't wrongfully convict an innocent man for a crime he
3 did not commit. We submit to you the prosecution failed to
4 meet its burden; they have not proved this case beyond a
5 reasonable doubt.

6 Now, I don't get to get back up. The government gets
7 to have what they call a rebuttal summation. So, I am going to
8 want to stand up. After all, I am a lawyer, and I do want to
9 speak a lot, but I can't. So, I'm going to ask you to think
10 about what I would say in response to the arguments that are
11 going to be made in a minute here. Think about how I would
12 respond. And I think if you do that, when you deliberate, that
13 you are going to return the only verdict that's consistent with
14 the evidence here, that there is reasonable doubt and that Mr.
15 Serrano is not guilty of these charges.

16 THE COURT: Thank you, Mr. De Castro. Ms. Maimin.

17 MS. MAIMIN: Thank you, your Honor.

18 Ladies and gentlemen, what you just heard from Mr. De
19 Castro was an attempt to take your eyes off the ball, to
20 distract you from the overwhelming evidence of the defendant's
21 guilt in this case. Now, that's not blaming Mr. De Castro. He
22 is a great attorney, and he is working hard for his client, but
23 those are the only kinds of arguments he can make in a case
24 like this where the defendant's guilt is so clear.

25 Now, as Judge Forrest told you at the beginning of the

E6J7SER3

Rebuttal - Ms. Maimin

1 trial, and Mr. Mukhi said it again just now, the government has
2 the burden of proof in this case. We welcome that burden, but
3 if the defense just make arguments like he just did now, and
4 like they did during this trail, it's perfectly appropriate for
5 us to address them, and that's what I'm going to do today.

6 Ladies and gentlemen, let's get right down to it.
7 It's very obvious what Mr. De Castro just tried to do. He
8 spent the majority of his time arguing that you should find the
9 defendant not guilty because Victor Moral is a bad person,
10 because he played an important role in the crew too, like the
11 defendant. Why is he doing that? Because if you believe
12 Victor Moral, the defendant is guilty, case closed, plain and
13 simple.

14 Now, before I get to that argument, I just want to
15 remind you that Mr. Mukhi just described in detail all of the
16 evidence in the defendant's guilt that has nothing to do with
17 Victor Moral. This cell site data placing him at the scene of
18 the crime in Washington Heights at the time the crime was being
19 committed, and at no other time in Washington Heights during a
20 three month period: The phone records linking him to his
21 fellow robbers at every critical point during this conspiracy.
22 The testimony of the defendant's victims, Mr. Gilbert and
23 Ms. Ynfante, about how the defendant's red car blocked their
24 escape. The heroin that the defendant sold out of his home.
25 The recording where the defendant outlined his means and

E6J7SER3

Rebuttal - Ms. Maimin

1 methods for committing robberies. There is plenty of
2 independent evidence of the defendant's guilt, and it doesn't
3 rely on Mr. Moral at all.

4 But let's talk now about how you know that Mr. Moral
5 is telling the truth. First of all, you look at his demeanor
6 on the stand. Look at how open he was when he was testifying
7 all about those crimes he has committed in the past: Murder,
8 violent armed robberies. Mr. Moral was just as open with Mr.
9 De Castro on cross-examination as he was when I was talking to
10 him. He didn't try to hide anything about his past crimes.

11 Now, your life experiences and your common sense tells
12 you that when someone is willing to point the finger at someone
13 else but they don't want to talk about themselves, that's very
14 hard to swallow. They're not credible if they do that. But
15 when someone is on the witness stand in federal court, in front
16 of a federal judge and federal prosecutors and a federal
17 criminal jury, openly confessing to murder, violent robberies,
18 nearly a million dollars in cargo theft, and dealing kilos of
19 heroin and cocaine, you need to take that into consideration
20 when assessing his credibility.

21 And, by the way, how did you learn about all those
22 crimes? He told you about them; Mr. Moral told but them. He
23 wasn't caught on cross-examination hiding anything. You
24 learned about his crimes from him.

25 Now, look at Mr. Moral's incentives here. What are

E6J7SER3

Rebuttal - Ms. Maimin

1 his incentives to tell the truth? Is it better for him to tell
2 the truth, or is it better for him to lie? You heard him tell
3 you himself this is the first time in his entire life that it
4 actually benefits him to tell the truth. It is night and day
5 from his own murder trail, and it is night and day when he was
6 a confidential source in New Jersey, when he had nothing
7 hanging over his head like a 17 year mandatory minimum sentence
8 and the possibility of life in prison. And he will get that
9 penalty. He will spend at least 17 years in prison unless he
10 gets that 5K letter he testified about. The judge will not
11 have any choice but to sentence him to at least 17 years in
12 prison unless he gets the letter. And how does he get the
13 letter? He testifies truthfully. He meets with the government
14 and tells the truth and then he gets on the witness stand and
15 tells the truth again.

16 Now, on the other hand, if he lies, if he lies during
17 a proffer session with the government, if he lies on the
18 witness stand, the cooperation agreement gets ripped up, it's
19 over. But what's the important part? The guilty plea remains;
20 he is stuck with it. He remains convicted of those serious
21 crimes, he does not get the 5K letter, and he spend at least 17
22 years in jail and as much as the rest of his life. It is very
23 difficult to imagine a greater incentive to tell the truth than
24 that.

25 Now, Mr. De Castro argued to you that even despite his

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1 cooperation agreement Mr. Moral somehow had to lie to save
2 himself, he has to pin it on the defendant to frame him. But
3 Mr. Moral told you he committed crimes with a lot of people.
4 On cross-examination Mr. De Castro started listing them, name
5 after name, after name, people Mr. Moral committed crimes with
6 in multiple states. Mr. Moral had plenty of people to
7 cooperate against; he doesn't need to frame Anthony Serrano.
8 That's ridiculous. Not only does he not need to do that, but
9 just consider for a moment the risk he takes by doing that.
10 For the same reason he doesn't need to frame anybody, he would
11 be taking an enormous risk if he tried, because, as
12 Mr. De Castro pointed out on cross-examination, Mr. Moral has
13 committed dozens of crimes with dozens of people. If he lies
14 about a particular incident, if he lies about anything, he runs
15 an enormous risk of one of his coconspirators walking through
16 the door of this courtroom, taking the witness stand and
17 blowing him out of the water into a 17 year sentence. It's a
18 huge risk, and he is not going to take it.

19 Now, what's the other major way you know that
20 Mr. Moral is telling the truth? Well, what he told you is
21 backed up by all the other evidence in the case.

22 For example, October 14, 2012, the surveillance video
23 matches to a tee what Mr. Moral told you happened: The
24 defendant's red car -- which you know is registered to Julio
25 Camacho, the defendant's cousin -- was driving right in front

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1 of the victims, and then dropped off Kong who switched cars.
2 And the victims' account also matches what Mr. Moral told you
3 happened. They were parked in front of that bodega and barber
4 shop, they were followed by a police car and blocked off in
5 front by the red car which dropped off one of the robbers.

6 And again the cell site data backs up Moral. He told
7 you that the defendant went from New Jersey to Washington
8 Heights to the scene of the robbery and back over the George
9 Washington Bridge to Kearny to ransack that car. And that's
10 what the cell site shows you. The defendant went from his home
11 to Washington Heights, to the scene of the robbery, at the time
12 of the robbery, which was the only time he went to Washington
13 Heights in three months, back over the GW Bridge to Kearny and
14 back home at the end of the night. Now, this is proof that
15 Moral is telling the truth. It's also damning evidence of the
16 defendant's guilt.

17 By the way, what did Mr. Moral tell you about the way
18 the defendant operated that night? Mr. Moral was actually
19 annoyed at the defendant because he was trying to call the
20 shots behind the scenes without taking any of the risk of
21 getting caught. And you heard the defendant say in his own
22 words on that recording that's his MO, that's the way he
23 operates.

24 And, by the way, if you're wondering why the
25 government would put someone like Victor Moral on the stand,

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1 it's because it is Victor Moral who is going to commit crimes
2 with the defendant. We called him as our witness but it was
3 the defendant who chose to commit crimes with him. Would the
4 government prefer to put 100 nuns and priests on the stand to
5 testify in this case? Yes. But nuns and priests don't tend to
6 join armed robbery crews and deal drugs. The defendant chose
7 to be in a conspiracy with Mr. Moral; the government did not
8 choose that.

9 By the way, you will note that the defendant does not
10 want you to believe that Mr. Moral is lying about everything
11 here. When Mr. Moral tells you about robbery after robbery
12 after robbery he committed, and about his murder, about his
13 drug dealing, Mr. De Castro wants you to believe all of that
14 testimony. Now that Mr. Moral is telling the truth. But when
15 Mr. Moral talks about the defendant and tells you the defendant
16 is guilty, oh, no, he's a liar, don't listen to him. Well, you
17 can't have it both ways, ladies and gentlemen. Mr. Moral is
18 either telling the truth or he is lying. And you know from the
19 evidence in this case, and your common sense, that he is
20 telling the truth.

21 Now, what's another distraction that just came up?
22 Whether the defendant is a criminal mastermind. He only had
23 one phone, he was broke, he did drug deals in broad daylight.
24 Ladies and gentlemen, no one is saying that the defendant is a
25 criminal genius. We don't have to prove that he is a criminal

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1 genius mastermind for him to be guilty of this crime, just that
2 he is guilty of the crimes he is charged with. And we did do
3 that.

4 Another distraction: Mr. De Castro mentioned that
5 there was another heroin sale, February 14 sale, that the
6 defendant was not involved with. Well, it was a different
7 stamp, right? Fat Lady. Different stamp. Just because he
8 wasn't involved in one single sale does not mean he didn't sell
9 it the other times. Distraction.

10 Now, Mr. De Castro also spent a bunch of time talking
11 about, well, this is the Javion Camacho crew, this is the
12 Victor Moral crew, Camacho is the leader, Mr. Moral is the
13 leader. Let's just be clear, Mr. Mukhi said it, nothing to do
14 with the defendant's guilt in this case. The government does
15 not have to prove that the defendant is a leader, is a
16 mastermind, that he called the shots. It's irrelevant. If he
17 agreed to commit armed robbery and deal drugs with other
18 people, he's guilty.

19 Now, we did prove that the defendant was one of the
20 leaders of the crew with his cousin Javion Camacho. You heard
21 it from Moral. You saw evidence of it in the phone records,
22 his constant contact with Javion Camacho -- who no one is
23 disputing is one of the leaders -- and that recording which
24 shows the defendant's method of hanging back while other people
25 do his dirty work. That's something the boss does, not an

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1 underling. But it doesn't matter either way. The defendant
2 could have been at the bottom of the totem pole, he could have
3 been at the top of the totem pole; he's still guilty.

4 By the way, there is a lot of talk about how Javion
5 Camacho called this his team. Well, everyone called it their
6 team. You saw that. That's just how the members of this crew
7 referred to the crew, my team. They were all members.

8 Now, a related point. Mr. De Castro was saying that
9 the defendant didn't go to that DEA sting on January 9. That
10 was a big theme for the defendant during this trial.
11 Therefore, the argument is he wasn't involved in this crew at
12 all.

13 Well, Mr. Mukhi went into detail with the phone
14 records and the cell site data that shows the defendant was
15 closely involved in planning that robbery. He was planning it
16 with his cousin Javion Camacho. He was being kept in the loop
17 every step of the way. But of course he didn't go to that
18 robbery. Why would he take that risk? He wasn't willing to
19 show his face on a deserted street to two people during the
20 Washington Heights robbery. Why is he going to go in a five
21 car caravan with 16 other robbers to do a massive heroin
22 robbery? That is a much riskier operation, much more likely
23 for him to get identified and caught.

24 No, it was better, it was safer for the defendant to
25 hang back in New Jersey, just like his normal method of doing

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1 things, no need to get his hands dirty. It was his plan never
2 to get caught, never to be in this courtroom; and going on
3 January 9 would have put that plan in jeopardy, so of course he
4 didn't go. He didn't need to. His team was carrying the
5 robbery out while he was behind the scenes.

6 And, by the way, you will note that nobody is
7 disputing that Jauncey Valle was involved in that robbery. You
8 saw him on the video, and Mr. De Castro just talked about it
9 just now. He didn't show up. He wasn't there on January 9.
10 You don't hear Mr. De Castro saying Jauncey Valle wasn't
11 involved. Just quite the opposite. Again, he wants to have it
12 both ways, but he can't, because the evidence is overwhelming
13 that the defendant was involved.

14 Another distraction: You heard Mr. De Castro talking
15 about the fact that the two victims didn't testify that they
16 actually saw a gun. Let's just be clear about this. I expect
17 that Judge Forrest is going to instruct you that the defendant
18 is guilty if the presence of the weapon was made known to
19 another person to intimidate that person regardless of whether
20 the weapon was directly visible to that person. And you know
21 that weapon was made extremely clear to those two victims.
22 They both saw Javion Camacho reach for that gun, and they were
23 terrified. Terrified. They told you in their own words. The
24 defendant is guilty of the gun charge.

25 Now, Mr. De Castro also spent some time talking about

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1 the cell site evidence, attacking the cell site evidence. Of
2 course, that's not surprising because the cell site evidence
3 destroys him, it's extremely damning.

4 So, what did he say? Well, cell site evidence isn't
5 precise, it doesn't tell you exactly where a person is in a
6 particular time. Well, that's true, it tells you where the
7 closest cell tower is when they are communicating on their
8 phone. You also learned that in a busy city like New York
9 there can be cell site towers every two blocks.

10 But you don't need to know the exact location of the
11 defendant's phone to put two and two together about what
12 happened during this conspiracy and in particular on October
13 14, because you saw his phone traveling with his coconspirators
14 from New Jersey to Manhattan to Kearny and back. It doesn't
15 have to be the exact pinpointed location. The cell site
16 evidence tells you where he was. And, by the way, Agent Perry
17 also gave you his conclusion that the defendant's phone was in
18 Washington Heights at the time of the robbery.

19 Now, let me address the issue of reasonable doubt.
20 You heard from Mr. De Castro about the government's burden to
21 prove these charges beyond a reasonable doubt and what a high
22 standard it is. He is right, it is a high standard, and it
23 should be. But it's not a standard the government shies away
24 from. It's the same standard used in courthouses all across
25 this country every day.

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1 Now, to hear Mr. De Castro describe it, you might
2 think it's an impossible standard to meet, but it's not. It's
3 not some magical standard. It's not beyond any doubt; it's
4 beyond a reasonable doubt. And the judge will explain to you
5 more precisely what that means. However, I am confident you
6 can apply it as well as any jury. There is nothing mysterious
7 about it. It's the same reason you use in your everyday lives.
8 So, just follow the judge's instructions, using your reason and
9 common sense, and you will conclude that the defendant is
10 guilty.

11 Now I want you to just pause and think for a moment
12 about what Mr. De Castro is asking you to believe here. He's
13 asking you to believe that the defendant is not part of this
14 robbery crew, he's completely innocent, he just has the
15 misfortune of being related to two of its most violent leaders
16 and active members. And they're not just his cousins, they're
17 his very close cousins who he speaks to over 1,000 times in
18 less than a year, often most frequently on the days that the
19 cousins are involved in planning violent armed robberies.

20 Mr. De Castro is asking you to believe that the
21 defendant had nothing whatsoever to do with that attempted
22 robbery on January 9, he just happened to be speaking a lot
23 with his cousins on those days leading up to it and on the day.
24 The defendant had nothing to do with the Washington Heights
25 robbery. You are asked to believe he was just coincidentally

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1 at a bar in the Washington Heights area at the same exact time
2 a robbery was happening, as the same exact place the robbery
3 was happening, which just so happens -- based on the cell site
4 data -- to be the only time he is in that area in three months.
5 And he never sold heroin out of his house, he just happened to
6 be home and answer the door when somebody wanted to buy heroin,
7 and then that person left with heroin less than a minute later
8 and gave it to the F.B.I., but it wasn't the defendant who did
9 it.

10 And he is asking you to believe he is not a robber,
11 it's not his practice to let other people do his dirty work
12 while he waits around the corner. He happened to be caught on
13 a tape saying that, but it has nothing whatsoever to do with
14 the way he operates in a robbery crew.

15 Ladies and gentlemen, this is quite a list of
16 unfortunate coincidences for the defendant. Either he is
17 literally the unluckiest person in the world or he is guilty.
18 All of the evidence in this case and your common sense tells
19 you that he is not just a victim of many of unfortunate
20 coincidences. He is guilty.

21 Now, Mr. De Castro also suggested to you that the
22 consequences of the defendant's crimes are somehow your
23 responsibility now, you're deciding his fate because of your
24 jury service. That's not the case. The defendant is
25 responsible for what he did, not you.

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1 Ladies and gentlemen, some cases may be close. This
2 is not one of them. The evidence all points in the one
3 direction and one direction alone: The defendant is an armed
4 robber; he is a drug dealer; he uses guns to commit these
5 crimes; and he is guilty.

6 THE COURT: All right, thank you, Ms. Maimin.

7 Ladies and gentlemen, we are now going to have the
8 instructions on the law. You have been sitting for about 45
9 minutes, and the instruction is going to take about an hour and
10 15. So, the question is whether I do half, take a quick break,
11 come back and do the other half and then you have lunch
12 together -- we are bringing it into the room -- and then you
13 can deliberate over lunch, or whether or not I just go to
14 12:45, between now and 12:45, break, you have lunch, you don't
15 deliberate, we come back and finish the charge after that.

16 I am voting for option number one, but I want to check
17 with you folks, because if you folks want option number two,
18 then I will do option number two. What do you folks things?
19 One or two? I've got a lot of ones. All right, I am going to
20 charge you on the instructions, give you the charge.

21 Let me start by telling you what you are going to have
22 with you in the jury room. In the jury room you are going to
23 have with you, you can keep with you a copy of these
24 instructions. You are welcome to mark on them if you've got a
25 pen, or not. They will be thrown out at the end of your

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Charge

1 deliberations. They are really just here for you to follow
2 along and to refer to if you want to refer back.

3 Now, the written instructions are not what really
4 controls. It's my voice and what you hear me say that
5 controls. Every once in a while there will be something a
6 little bit different than what is written down, and that's
7 because of a couple of things. One, I ad-lib a little bit,
8 having done this before but, two, sometimes I notice a mistake,
9 and I change something that's substantive.

10 So, I want you even though you are following along, I
11 want you to listen to what I'm saying and not just sort of flip
12 ahead 20 pages and just not hear me. I want you to hear me
13 because it's what I say that controls.

14 You are also going to have all of the exhibits in the
15 jury room except for the weapons. All right? And also the
16 audiotapes you won't have in the jury room. We can play the
17 audiotapes back for you, but we will do that out here. The
18 technology for that is out here. But you will have all of the
19 e-mails or the text messages and things of that nature with
20 you.

21 You are also going to have a copy of the verdict form.
22 Each of you will have one copy of the verdict form, and there
23 will also be an extra. The extra is after you folks are ready
24 to render your verdict on each count, it's a clean one. I have
25 just learned that people sometimes mark theirs up, and they

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1 always ask for a clean one at the very end.

2 And you will have lunch. That's the other thing you
3 are going to have in the jury room.

4 All right. Now, let's go ahead and just flip to the
5 various charges. While this is a thick document, each page has
6 its own charge or a couple of pages, and so there is a lot of
7 blank space in here, and that's why it's so thick.

8 There is a table of contents. Just make sure you're
9 aware of that, because later on if you want to remind
10 yourselves about the elements, for instance, of Count One it
11 will give you a handy way to turn to that page.

12 Let's go to page 1, number page 1, which is
13 introductory instructions.

14 You have now heard all of the evidence in this case as
15 well as the final arguments of the lawyers for the parties. My
16 duty now is to instruct you as to the law. And it is your duty
17 to accept these instructions of law and apply them to the facts
18 as you determine them.

19 On these legal matters, you must take the law as I
20 give it to you. Regardless of any opinion that you may have as
21 to what the law may be -- or ought to be -- it would violate
22 your sworn duty to base a verdict upon any other view of the
23 law than that which I give you. If an attorney has stated a
24 legal principle different from any that I state to you now in
25 my instructions, it is my instructions that you must follow.

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1 You should not single out any instruction alone stating the
2 law, but you should consider my instructions as a whole when
3 you retire to deliberate in the jury room. And, as I said, you
4 can take a copy of these instructions with you into the jury
5 room.

6 The role for the jury is to pass upon and decide the
7 fact issues in this case. You, ladies and gentlemen of the
8 jury, are the sole and exclusive judges of the facts. You pass
9 upon the weight of the evidence; you determine the credibility
10 of the witnesses; you resolve such conflicts as there may be in
11 any testimony, and you draw whatever reasonable inferences you
12 decide to draw from the facts as you have determined them.

13 The evidence before you consists of the answers given
14 by witnesses and the exhibits and the stipulations that were
15 received into evidence. In determining the facts, you must
16 rely upon your own recollection of the evidence. I will
17 instruct you at the end of these charges about your ability to
18 request to have testimony read back and to access other
19 evidence that has been received.

20 Now, what the lawyers have said in their opening
21 statements, in any objections and in their questions, and what
22 they may say and what they have said now in their closing
23 arguments, is not evidence. You should bear in mind
24 particularly that a question posed to a witness is never
25 evidence. Only the answer is evidence. If a witness affirms a

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1 particular fact in a question by answering "yes," you may
2 consider that fact as agreed on by the witness; the weight you
3 give to that fact is up to you.

4 Nor are you to substitute anything that I may have
5 said during the trial or during these instructions with respect
6 to facts for your own independent recollection. What I say, in
7 other words, is not evidence. If I have sustained an objection
8 to a question -- and I haven't stricken any testimony -- but if
9 I sustained an objection, then if it was after an answer, then
10 that answer is no longer part of the record. That happened
11 very infrequently in this trial, as you folks know.

12 You should draw no inference or conclusion for or
13 against any party because of the lawyers' objections. Counsel
14 have not only the right but the duty to make legal objections
15 when they think that such objections are appropriate.

16 Also, do not draw any inferences from any of my
17 rulings. The rulings I have made during the trial are not any
18 indication of my views of what your decision should be as to
19 whether or not the government has proven the defendant guilty
20 of any of the crimes charged beyond a reasonable doubt. You
21 should draw no inference or conclusion of any kind, favorable
22 or unfavorable, with respect to any witness or any party in the
23 case, because of any comment, question, or instruction of mine.

24 Now, your verdict must be based solely upon the
25 evidence, or the lack of evidence. It would be improper for

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1 you to consider any personal feelings you may have about the
2 defendant's race, ethnicity, or national origin. It would be
3 equally improper for you to allow any feelings you might have
4 about the nature of the crimes charged to interfere with your
5 decision-making process.

6 I also want to remind you that before each of you was
7 accepted and sworn to act as a juror, you were asked questions
8 concerning competency, qualifications, fairness, and freedom
9 from prejudice or bias. On the faith of those answers, you
10 were accepted as jurors by the parties. Therefore, those
11 answers are as binding on each of you now as they were then,
12 and should remain so, until the jury is discharged from
13 consideration of this case.

14 Now, the fact that the prosecution is brought in the
15 name of the United States of America entitles the government to
16 no greater consideration than that given to any other party to
17 a litigation. By the same token, the government is entitled to
18 no less consideration.

19 The defendant has pleaded not guilty to the charges in
20 the indictment. As a result, the burden is on the government
21 to prove the defendant's guilt beyond a reasonable doubt. This
22 burden never shifts to the defendant for the simple reason that
23 the law never imposes upon a defendant in a criminal case the
24 burden or duty of testifying, or calling any witness, or
25 locating or producing any evidence.

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1 The law presumes a defendant to be innocent of the
2 charges. This presumption was with the defendant when the
3 trial began and remains with the defendant unless and until you
4 are convinced that the government has proven the defendant's
5 guilt beyond a reasonable doubt.

6 So, the question naturally arises: "What is
7 reasonable doubt?" What does that phrase mean? Well, the
8 words almost define themselves. A reasonable doubt is a doubt
9 based in reason and arising out of the evidence in the case, or
10 the lack of evidence. It is a doubt that a reasonable person
11 has after carefully weighing all of the evidence in this case.

12 Reasonable doubt is a doubt that appeals to your
13 reason, your judgment, your experience, and your common sense.
14 If, after a fair and impartial consideration of all the
15 evidence, you can candidly and honestly say that you are not
16 satisfied with the guilt of the defendant, that you do not have
17 an abiding and firm belief in the defendant's guilt; in other
18 words, if you have such a doubt as would reasonably cause a
19 prudent person to hesitate in acting in matters of importance
20 in his or her own affairs, then you have a reasonable doubt,
21 and in that circumstance, it is your duty to find the defendant
22 not guilty.

23 On the other hand, if after a fair and impartial
24 consideration of all the evidence you can candidly and honestly
25 say that you do have an abiding belief of the defendant's

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1 guilt, such a belief as a prudent person would not hesitate to
2 rely upon in important matters in the permanent affairs of his
3 or her own life, then you have no reasonable doubt, and under
4 the circumstances it is your duty to find the defendant guilty.

5 One final word on this subject: Reasonable doubt is
6 not whim or speculation. It is not an excuse to avoid the
7 performance of an unpleasant duty. Nor is it sympathy for the
8 defendant. Beyond reasonable doubt does not mean a positive
9 certainty, or beyond all possible doubt. After all, it is
10 virtually impossible for a person to be absolutely and
11 completely convinced of any contested fact that by its nature
12 is not subject to mathematical proof or certainty. As a
13 result, the law in a criminal case is that it is sufficient if
14 the guilt of the defendant is established beyond a reasonable
15 doubt, not beyond all possible doubt.

16 Now, the defendant, Mr. Anthony Serrano, has been
17 formally charged in what we have all been referring to, and we
18 explained to you at the beginning is called an indictment.

19 As I instructed you at the outset of this trial, the
20 indictment is simply an accusation. It is no more than the
21 means by which a criminal case is started. It is not evidence.
22 It is not proof of the defendant's guilt. It creates no
23 presumption, and it permits no inference that the defendant is
24 guilty of the crimes charged.

25 You are to give no weight to the fact that an

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1 indictment has been returned against the defendant.

2 I am not going to read the entire indictment to you at
3 this time. In a moment, I'm going to summarize for you the
4 charges in the indictment and then explain to you in detail the
5 each of the crimes charged.

6 Now, you must consider each count in the indictment
7 separately, and you will determine with respect to each whether
8 the government has met its burden of proof.

9 Now, there are two types of evidence, direct and
10 circumstantial evidence, and you can use both of them in
11 reaching your verdict. One type, direct evidence, is a
12 witness's testimony about something that he or she knows by
13 virtue of his or her own senses, something that the witness has
14 smelled, touched, heard. Direct evidence may also be in the
15 form of an exhibit.

16 There are other types of evidence, and the second one
17 is called circumstantial evidence. Circumstantial evidence is
18 evidence that tends to prove one fact by proof of other facts.

19 By way of example, if you wake up in the morning and
20 see that the sidewalk is wet, you may find from that fact that
21 it rained during the night. However, other evidence, such as a
22 turned-on garden hose, may explain the water on the sidewalk.
23 Therefore, before you decide that a fact has been proven by
24 circumstantial evidence, you must consider all the evidence in
25 light of reason, experience, and common sense.

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1 That is all there is to circumstantial evidence. You
2 infer based on reason, experience, and common sense from an
3 established fact the existence or the nonexistence of some
4 other fact.

5 I will give you another example, and this is the
6 deserted island example that I gave you at the beginning of the
7 case. Let's assume that you've been alone for five very long
8 years. One day, you see footprints in the sand, human
9 footprints, of a size several sizes larger than your own. You
10 haven't seen a person, but based on the footprint, you are able
11 to put two and two together and determine that you are no
12 longer alone. Someone is now on the island with you. That
13 deduction or inference on your part is based on circumstantial
14 evidence and it constitutes your determination of a fact.

15 Many facts, such as a person's state of mind, can only
16 rarely be proven by direct evidence. Circumstantial evidence
17 is of no less value than direct evidence. It is a general rule
18 that the law makes no distinction between direct and
19 circumstantial evidence, but simply requires that, before
20 convicting the defendant, you, ladies and gentlemen of the
21 jury, must be satisfied of the defendant's guilt beyond a
22 reasonable doubt from all of the evidence.

23 Now, during the trial, and as I give you these
24 instructions, you have heard and will hear the term
25 "inference." For instance, in the closing arguments, the

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1 attorneys have asked you to infer, based upon your reason,
2 experience, and common sense, from one or more established
3 facts, the existence of some other fact. And I have instructed
4 you on circumstantial evidence and that it involves inferring a
5 fact based on other facts, your reason, and common sense.

6 What is an "inference"? What does it mean to "infer"
7 something? An inference is not a suspicion or a guess. It's a
8 reasoned, logical decision to conclude that a disputed fact
9 exists based on another fact that you know exists.

10 There are times when different inferences may be drawn
11 from facts, whether proven by direct or circumstantial
12 evidence. The government asks you to draw one set of
13 inferences, while the defense asks you to draw another. It is
14 for you, and you alone, to determine what inference you will
15 draw.

16 The process of drawing inferences from facts in
17 evidence is not a matter of guesswork or speculation. An
18 inference is a deduction or conclusion that you, the jury, are
19 permitted but not required to draw from the facts that have
20 been established by either direct or circumstantial evidence.
21 In drawing inferences, you should exercise your common sense.

22 Therefore, while you are considering the evidence
23 presented to you, you may draw, from the facts that you find to
24 be proven, such reasonable inferences as would be justified in
25 light of your experiences.

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1 However, some inferences are not permissible. You may
2 not infer that the defendant is guilty of participating in
3 criminal conduct merely from the fact that he was present at
4 the time the crime was being committed and had knowledge that
5 it was being committed. Nor may you use evidence that I have
6 instructed you was admitted for a limited purpose for any
7 inference beyond that limited purpose.

8 In addition, you may not infer that the defendant is
9 guilty of participating in criminal conduct merely from the
10 fact that he associated with other people who were guilty of
11 wrongdoing or merely because he has or had knowledge of the
12 wrongdoing of others.

13 Here again, let me remind you that, whether based on
14 direct or circumstantial evidence, or upon the logical,
15 reasonable inferences drawn from such evidence, you must be
16 satisfied of the guilt of the defendant beyond a reasonable
17 doubt before you may convict the defendant of any of the crimes
18 charged.

19 Now for the important topic of evaluating testimony.
20 How do you evaluate the credibility or the believability of a
21 witness? The answer is that you use your plain common sense.
22 Common sense is your greatest asset as a juror. You should ask
23 yourselves, did the witness impress you as open, honest,
24 candid? Or did the witness appear evasive or as though the
25 witness were trying to hide something? How responsive was the

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Charge

1 witness to the questions asked on direct examination and on
2 cross-examination?

3 If you find that a witness is intentionally telling a
4 falsehood, that is always a matter of importance that you
5 should weigh carefully. If you find that any witness has lied
6 under oath at this trial, you should view the testimony of such
7 a witness cautiously and weigh it with great care. It is,
8 however, for you to decide how much of the witness's testimony,
9 if any, you wish to believe. Few people recall every detail of
10 every event precisely the same way. A witness may be
11 inaccurate, contradictory, or even untruthful in some respects
12 and yet entirely believable and truthful in other respects. It
13 is for you to determine whether such inconsistencies are
14 significant or inconsequential, and whether to accept or reject
15 all or to accept some and reject the balance of the testimony
16 of any witness.

17 On some occasions during this trial, witnesses were
18 asked to explain an apparent inconsistency between testimony
19 offered at this trial and previous statements. It is for you
20 to determine whether a prior statement was inconsistent, and
21 how much weight to give that.

22 In evaluating credibility of the witnesses, you should
23 take into account any evidence that the witness who testified
24 may benefit in some way from the outcome of this case. Such an
25 interest in the outcome creates a motive to testify falsely and

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1 may sway the witness to testify in a way that advances his own
2 interests. Therefore, if you find that any witness whose
3 testimony you are considering may have an interest in the
4 outcome of this trial, then you should bear that factor in mind
5 when evaluating the credibility of his or her own testimony and
6 accept it with great care. This is not to suggest that any
7 witness who has an interest in the outcome of the case would
8 testify falsely. It is for you to decide to what extent, if at
9 all, the witness's interest has affected or colored his or her
10 testimony.

11 You are not required to accept testimony even though
12 the testimony is uncontradicted and the witness's testimony is
13 not challenged. You may decide because of the witness's
14 bearing or demeanor, or because of the inherent improbability
15 of the testimony, or for other reasons sufficient to yourselves
16 that the testimony is not worthy of belief. On the other hand,
17 you may find, because of a witness's bearing and demeanor and
18 based upon your consideration of all of the other evidence in
19 the case, that the witness is truthful.

20 Thus, there is no magic formula by which you can
21 evaluate testimony. You bring to this courtroom all of your
22 experience. You determine for yourselves in many circumstances
23 the reliability of statements that are made by others to you
24 and upon which you are asked to rely and act in your everyday
25 life. You may use the same tests here that you use in your

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1 everyday lives. You may consider the interest of any witness
2 in the outcome of this case and any bias or prejudice of any
3 such witness, and this is true regardless of who called or
4 questioned the witness.

5 A defendant in a criminal case does not have a duty to
6 testify or come forward with any evidence. Under our
7 Constitution, a defendant has no obligation to testify or to
8 present any evidence, because it is the government's burden to
9 prove a defendant guilty beyond a reasonable doubt. The burden
10 remains with the government throughout the entire trial and
11 never shifts to the defendant. The defendant is never required
12 to prove that he is innocent.

13 In this case, the defendant, Anthony Serrano, chose
14 not to testify. You must not attach any significance to the
15 fact that the defendant did not testify. I instruct you that
16 no adverse inference against the defendant may be drawn by you
17 because he did not take the witness stand, and you may not
18 consider it in any way in your deliberations in the jury room.

19 Now, you have heard testimony from law enforcement
20 officials. The fact that a witness may be employed as a law
21 enforcement official does not mean that his or her testimony is
22 necessarily deserving of more or less consideration, or greater
23 or lesser weight, than that of an ordinary witness.

24 At the same time, it is legitimate for defense counsel
25 to try to attack the credibility of a law enforcement witness.

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1 As I have said, it is for you -- the fact finders in this
2 case -- to determine the issues of credibility.

3 It is your decision, after reviewing all of the
4 evidence, whether to accept the testimony of the law
5 enforcement witness and to give that testimony whatever weight,
6 if any, that you find it deserves.

7 Now, you heard from a witness who testified that he
8 has committed crimes. Let me say a few things that you want to
9 consider during your deliberations on the subject of what we
10 call cooperating witnesses.

11 Cooperating witness testimony should be given such
12 weight as it deserves in light of the facts and circumstances
13 before you, taking into account the witness's demeanor, candor,
14 the strength and accuracy of the witness's recollection, the
15 witness's background, and the extent to which the witness is or
16 is not corroborated by other evidence in the case.

17 You may consider whether the cooperating witness, like
18 any other witness called in a case, has an interest in the
19 outcome of the case and, if so, whether it has affected his or
20 her testimony.

21 You also heard testimony about an agreement between
22 the government and the cooperating witness. I must caution you
23 that it is no concern of yours why the government made an
24 agreement with a witness. However, the existence of the
25 agreement itself and its effect on the witness may be

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1 considered by you in determining credibility. Your sole
2 concern is whether a witness has given truthful testimony here
3 in this courtroom.

4 In evaluating the testimony of cooperating witnesses,
5 you should ask yourselves whether the cooperating witness would
6 benefit more by lying, or by telling the truth. Was his
7 testimony made up in any way because he believed or hoped that
8 he would somehow receive favorable treatment by testifying
9 falsely? Or did he believe that his interests would be best
10 served by testifying truthfully? If you believe that the
11 witness was motivated by hopes of personal gain, was the
12 motivation one which would cause him to lie, or was it one
13 which would cause him to tell the truth? Did this motivation
14 color his testimony?

15 If you find that the testimony was false, you should
16 reject it. However, if, after a cautious and careful
17 examination of the cooperating witness's testimony and demeanor
18 upon the witness stand, you are satisfied that the witness told
19 the truth, you should accept it as credible and act upon it
20 accordingly.

21 As with any witness, let me emphasize that the issue
22 of credibility need not be decided in an all-or-nothing
23 fashion. Even if you find that a witness testified falsely in
24 one part, you may still accept his or her testimony in other
25 parts, or may disregard all of it. That is a determination

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1 entirely for you, the jury.

2 You have also heard testimony that the cooperating
3 witness pled guilty to charges arising out of the same facts
4 that are at issue here in this case. You are instructed that
5 you are to draw no conclusions or inferences of any kind about
6 the guilt of the defendant on trial from the fact that a
7 government witness pled guilty to similar charges. The
8 decision of that witness to plead guilty was a personal
9 decision that witness made about his own guilt. It may not be
10 used by you in any way as evidence against or unfavorable to
11 the defendant here.

12 There has also been testimony before you about the use
13 of informants. Informants are frequently used by the
14 government to obtain leads and to gain introduction to people
15 suspected of violating the law. There are certain types of
16 crimes where, without the use of informants, detection would be
17 extremely difficult. Because this law enforcement technique is
18 lawful, your personal views on its use -- whether you approve
19 or disapprove -- is beside the point and must not affect the
20 evaluation of the evidence in this case.

21 Now, yesterday I gave you a special instruction
22 relating to that last audio recording that you heard, and I am
23 going to give you now another special instruction on that same
24 audio recording and also on some additional earlier evidence
25 that you heard in the case regarding the earlier cargo theft,

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1 the one where Mr. Moral mentioned an earlier cargo theft before
2 2012 relating to the defendant.

3 The government has offered evidence regarding the
4 defendant's participation, on July 28, 2013 in the planning of
5 a burglary and a cargo theft, and his participation in the sale
6 of stolen cargo with Victor Moral in or about 2010 and 2011.
7 As I said yesterday, the defendant is not here on trial for
8 these acts. Accordingly, you may not consider this evidence as
9 a substitute for proof that the defendant committed any of the
10 crimes with which he is charged in the indictment, nor may you
11 consider this evidence as proof that he has a criminal
12 personality or bad character.

13 The evidence was admitted for a much more limited
14 purpose, and you may consider it for that limited purpose only.
15 You may but are not required to draw an inference from the
16 evidence regarding the defendant's alleged participation on
17 July 28, 2013 in the planning of a burglary and a cargo theft
18 that the defendant had a particular way of doing things, or
19 "modus operandi," MO, with respect to the crimes charged in the
20 indictment. In addition, you may but are not required to
21 consider the evidence that the defendant participated in the
22 sale of stolen cargo in or about 2010 or 2011 with Victor Moral
23 as background evidence to the development of the relationship
24 between the defendant and Victor Moral. It's actually 2010 and
25 2011. I put an "or" there, and it should be an "and". This

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1 evidence may not be considered by you for any other purpose.
2 Specifically, you may not use this evidence to conclude that
3 the defendants must have committed the crimes charged in the
4 indictment.

5 Now, you may not draw any inference, favorable or
6 unfavorable, towards the government or the defendant on trial,
7 from the fact that certain persons were not named as a
8 defendant in the indictment. The fact that these persons are
9 not here on trial now must play no part in your deliberations.

10 Whether a person should be named as a coconspirator or
11 indicted as a defendant in this matter is within the sole
12 discretion of the United States Attorney and the grand jury.
13 Therefore, you may not consider it in any way in reaching your
14 verdict as to the defendant here on trial now.

15 Now, you heard evidence during the trial that
16 witnesses have discussed the facts of the case and their
17 testimony with the government lawyers or his or her own lawyer
18 before the witness appeared in court.

19 Although you may consider that fact when you are
20 evaluating a witness' credibility, I instruct you that there is
21 nothing either unusual or inherently improper about a witness
22 meeting with government lawyers or his own lawyers before
23 testifying so that the witness can be aware of the subjects he
24 or she will be questioned about, to focus on those subjects,
25 and have the opportunity to review relevant exhibits before

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Charge

1 being questioned about them. Such consultation helps conserve
2 time, your time and the court's time. In fact, it would be
3 unusual for a lawyer to call a witness without such
4 consultations.

5 The weight you give to the fact or the nature of the
6 witness's preparation for his or her testimony and what
7 inferences you draw from such preparations are completely
8 matters within your discretion.

9 (Continued on next page)

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Jury Charge

1 THE COURT: Now, you've heard reference throughout
2 questioning to the fact that certain investigative techniques
3 were used by the government. There is no legal requirement
4 however that the government prove its case through any
5 particular means. While you are to carefully consider the
6 evidence adduced by the government you are not to speculate as
7 to why law enforcement authorities used the techniques they
8 did. Your concern is whether or not on the evidence or lack of
9 evidence the defendant's guilt has been proven beyond a
10 reasonable doubt.

11 You have heard tape recordings of telephone
12 conversations. There is nothing illegal about the government's
13 use of recordings and the tapes and you may consider the
14 conversations contained on the tape recordings along with all
15 of the other evidence in this case. Whether you approve or
16 disapprove of the interception of recordings of these
17 conversations may not enter into your deliberations.

18 You must therefore, regardless of any personal opinion
19 give this evidence full consideration along with all the other
20 evidence in the case in determining whether the government has
21 proven beyond a reasonable doubt the guilt of the defendant.

22 The parties have shown you typed transcripts and
23 subtitles of certain audio recordings. The recordings
24 themselves as I have told you, those are what have been
25 received into evidence. The transcripts and the subtitles are

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Jury Charge

1 not evidence. They were provided to you as an aid or guide to
2 assist you in listening to the recordings. As you may recall,
3 when the recordings were played I advised you to listen very
4 carefully to the record themselves. You alone should make your
5 own interpretation of what you heard on recordings. If you
6 think you heard something different from what was typed on the
7 transcript or in the subtitle, then what you heard is
8 controlling.

9 You also heard testimony from one expert witness.
10 Such a witness is permitted to express his opinion on matters
11 about which he has specialized knowledge and training. The
12 parties present expert testimony to you on the theory that
13 someone who is experienced in the field can assist you in
14 understanding the evidence or in reaching an independent
15 decision on the facts. In weighing an expert's testimony you
16 may consider the expert's qualifications his opinions and his
17 reasons for testifying as well as all the other considerations
18 that ordinarily apply including all the other evidence in the
19 case. You may give expert testimony whatever weight, if any,
20 that you find it deserves in light of all of the other evidence
21 in the case. However, you should not accept witness testimony
22 simply because the witness happens to be an expert. Nor should
23 you substitute such testimony for your own reasons, judgment
24 and common sense. The determination of the facts in this case
25 rests solely with you.

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Jury Charge

1 Now, you did hear read certain stipulations of fact.
2 A stipulation of fact is an agreement among the parties that a
3 certain fact is true and you should regard such agreed fact as
4 true.

5 You also heard the name of several people during the
6 course of the trial who did not appear here to testify and one
7 or more of the attorneys may have referred to their absence. I
8 instruct you that each party had an equal opportunity or lack
9 of opportunity to call any of these witness. However, the
10 government bears the burden of proof in this trial. The
11 defendant does not bear the burden of proof. Therefore, you
12 should not draw any inference or reach any conclusion as to
13 what these persons would have testified had they been called.
14 Their absence should not affect your judgment in any way. You
15 should however remember my instruction that the law does not
16 impose on a defendant in a criminal case the burden or duty of
17 calling any witnesses or producing any evidence.

18 Now, let's take just a short five-minute break, just a
19 very quick break just to sort of stretch your legs, use the
20 facility if you need to and then get right back to the doors so
21 Joe can come and get you. We'll finish the instructions and
22 then you'll be sent into the room to deliberate. Now you are
23 not yet at the point when you can discuss the case. So, in
24 these quick few minutes don't discuss the case with each other.
25 Thank you.

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Jury Charge

1 (Jury not present)

2 THE COURT: Ladies and gentlemen, I have just two
3 quick matters.

4 One is that I have changed the verdict form slightly.
5 I realized when it was being reviewed during Mr. Mukhi's
6 summation that Question 1B should be modified slightly. It
7 stated before if you checked "yes" in response to the prior
8 question you may move on to the next count. I have struck the
9 word "count" and inserted the following:

10 Question (1C) regarding cocaine, and then it
11 continues. Because even if they answer the heroin question
12 however they answer it, they still need to go on to the cocaine
13 question, all right.

14 Also, similarly in Count Three I changed the comma, I
15 inserted the word "or". Only consider Count Three if you have
16 found the defendant guilty on Count One or Count Two or both.
17 All right. Those are the two changes I've made. Are they
18 acceptable?

19 MR. DE CASTRO: Yes.

20 MR. MUKHI: Yes, your Honor.

21 THE COURT: All right. Now, I also modified a little
22 by bit of language as I was going along to conform to how
23 things, in fact, came in and what, in fact, seemed to be
24 relevant. They were some minor changes but you probably heard
25 them if you were following along. Does anyone have any

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Jury Charge

1 exceptions as to what I have said so far or anything else?

2 MS. MAIMIN: No, your Honor.

3 MR. DE CASTRO: No, your Honor.

4 THE COURT: All right. Let's take a very short break
5 and we'll come on back. Thank you.

6 (Recess)

7 THE COURT: Why don't you find out from them if it's
8 OK if we run till 1:15. If not then we'll run to one o'clock
9 and then stop.

10 (Pause)

11 COURTROOM DEPUTY: They would like to go straight
12 through.

13 THE COURT: All right. Go ahead and bring the jury
14 out.

15 (Jury present)

16 THE COURT: All right. Ladies and gentlemen, let's
17 all be seated again and we're picking up on page 30 if you are
18 following along in the written instructions. And we're at the
19 summary of the indictment.

20 The defendant Anthony Serrano as you know has been
21 formal charged in the document as we called an indictment. And
22 as I instructed you at the outset of this case the indictment
23 is not proof of anything. It's just a charge or accusation.
24 Here the indictment contains three counts, two of the counts
25 charge conspiracies and one count relates to a firearm. Each

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Jury Charge

1 of those counts constitutes a separate crime and you have to
2 consider each separately. So you'll consider them Count One,
3 Count Two, Counsel Three that's what the verdict form will lead
4 you through.

5 Now, Count One charges Anthony Serrano with
6 participating in a conspiracy to distribute or possess with
7 intent to distribute a controlled substance. Here, heroin
8 and/or cocaine. That conspiracy is alleged to have existed
9 from at least in or about 2012 up through an including July 31,
10 2013.

11 Count Two charges Serrano with participating in a
12 conspiracy to commit a robbery, the object of which was to rob
13 individuals believed to be engaged in narcotics trafficking.
14 That conspiracy is also alleged to have existed during the same
15 time period.

16 Count Three charges Serrano with carrying a firearm
17 during and in relation to or possessing a firearm in
18 furtherance of the narcotics conspiracy charged in Count One
19 and the robbery conspiracy charged in Count Two or aiding and
20 abetting another doing the same.

21 Now it can be either Count One or Count Two. So for
22 Count Three, the firearms count, we'll go through it but it can
23 relate to either Count One or Count Two and I'll discuss the
24 elements for each of these in a moment.

25 As I said, Count One charges the defendant with

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Jury Charge

1 participating in a conspiracy to violate the narcotics laws of
2 the United States. In order to find the defendant guilty of
3 this count you have to find that the government has proven
4 beyond a reasonable doubt the following two elements:

5 First, that the conspiracy charged in the indictment
6 existed, that is, an agreement or understanding between two or
7 more persons existed from in or about 2012 through on or about
8 July 31, 2013 to achieve some unlawful end, that is, to do
9 something. The unlawful end is what we call the object of the
10 conspiracy. Every conspiracy has to have one or more objects
11 or goals. In Count One the object charged is that the
12 defendant and others intentionally and knowingly agreed to
13 distribute or to possess with intent to distribute a controlled
14 substance here, heroin and or cocaine. Therefore, the first
15 question for you is did the conspiracy alleged in the
16 indictment exist? Was there such a conspiracy?

17 Second, the government must prove beyond a reasonable
18 doubt that the defendant intentionally and knowingly became a
19 member of the conspiracy charged, that is, that he knowingly
20 participated in the conspiracy to distribute or possess with
21 the intent to distribute narcotics with knowledge of its object
22 and with an intent to further the aims of the conspiracy.

23 Before I explain the elements of the conspiracy in
24 greater detail, let me make one point. In considering a
25 conspiracy charge you do not have to find that the actual

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Jury Charge

1 crime, the substantive crime, that is the object of the
2 conspiracy has been committed, here, an actual distribution or
3 possession with intent to distribute narcotics or an actual
4 robbery, that would be the substantive crime. In a conspiracy
5 case it's the agreement itself, the agreement or the
6 understanding itself with others to commit the crime that is
7 the crime, along the other elements of the conspiracy. And
8 that's what the law for bids. So it's not whether or not it
9 was completed or achieved or successful. It's whether there
10 was an agreement or understanding to achieve that unlawful end,
11 whether the unlawful end was in fact achieved or not.

12 Now, how do you determine whether or not a conspiracy
13 existed? Simply defined a conspiracy is an agreement between
14 two or more people to violate the law. A conspiracy has
15 sometimes been called a partnership for criminal purposes in
16 which each partner becomes the agent of every other partner.
17 To establish the existence of a conspiracy, however, the
18 government is not required to show that two or more people sat
19 around a table and entered into a formal contract. Indeed, it
20 would be extraordinary if there was such a formal document or
21 specific agreement. From its very nature a conspiracy is
22 almost always characterized by secrecy and concealment. It is
23 sufficient if two more persons in any manner whether they say
24 so directly or not come to a common understanding to violate
25 the law. Expressed language or specific words are not required

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Jury Charge

1 to indicate agreement to or membership in a conspiracy.

2 It is not necessary that a conspiracy actually succeed
3 in its purpose for you to conclude that it existed. If a
4 conspiracy exists, even if it should fail in its purpose it is
5 still a crime. In determining whether there has been an
6 unlawful agreement you may judge the acts and conduct of the
7 alleged members of the conspiracy that are done to carry out an
8 apparent criminal purpose. The adage "actions speak louder
9 than words" is applicable here.

10 If upon consideration of all the evidence, direct and
11 circumstantial and you find beyond a reasonable doubt that the
12 minds of two or more conspirators met, we sometimes call this a
13 meeting of the minds, that is that they agreed as I have
14 explained a conspiratorial agreement to you to work together in
15 furtherance of the unlawful scheme alleged in the indictment,
16 then proof of the existence of that conspiracy is established.

17 So, for Count One let's talk about the object of the
18 conspiracy. As said in order to find the defendant guilty of
19 the conspiracy charged in the indictment, and, again, you've
20 got one type of conspiracy in Count One and another conspiracy
21 in Count Two, you must find that the government has also met
22 its burden of proof with respect to what it has charged or
23 asserted was the object or the goal of the conspiracy.

24 Put another way, what did the conspirators want to
25 achieve? What was their unlawful end? In Count One the

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Jury Charge

1 government charges that the object or goal of the conspiracy
2 was either to distribute or to possess with intent to
3 distribute a controlled substance here, heroin and/or cocaine
4 and they are controlled substances.

5 Thus, to find that the government has met its burden
6 of proof with respect to Count One the government must prove
7 that a goal or object of the conspiracy, again, whether it
8 succeeded or not was the goal of distributing or possessing
9 with intent to distribute heroin and/or cocaine. To distribute
10 means just that, to distribute. When one has the object or
11 goal to distribute something to someone else, one has the
12 object or goal of transferring it. Possession also means just
13 that, to have possession or to possess something. Now to have
14 the object to possess or to have custody or control something
15 such as a controlled substance, does not mean that it has to
16 physically be on someone's person. And more than one person
17 can possess the same thing. The key is that to have the object
18 to possess something means a person must have the object of
19 exercising some control over it.

20 If you have determined that the object of the
21 conspiracy was to possess a controlled substance you must then
22 make a determination as to the drug types and quantities. I'll
23 talk about that more in a moment. In making your determination
24 about the type and quantity of any controlled substance
25 involved in the conspiracy charged in Count One you should

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Jury Charge

1 include whatever type and quantity of controlled substance were
2 involved in any act or acts in which the defendant personally
3 and directly participated. That is, if you find that the
4 defendant directly and personally participated in a jointly up
5 undertaken drug transaction, he is personally responsible for
6 the full quantity of drugs involved in that transaction,
7 whether or not he knew the specific type or quantity involved
8 in the transaction and whether or not the type and quantity
9 were reasonably foreseeable to him.

10 In making your determination about type and quantity
11 however, you should also include any other controlled
12 substances, the conspiracy involved so long as the type and
13 quantity were either known to the defendant or reasonably
14 foreseeable to him and within the scope of the criminal
15 activity that he jointly undertook. Reasonably foreseeable
16 means that the defendant could have reasonably anticipated the
17 type and quantity of drugs involved in the conspiracy. I am
18 going to come back to quantity in a moment.

19 If you find that the object of the conspiracy charged
20 in this count was to possess a controlled substance, then you
21 must decide whether the object of the conspiracy included an
22 intent to distribute it. In order to establish this element
23 the government must prove beyond a reasonable doubt that an
24 object of the conspiracy was to control the controlled
25 substance with the purpose of or intention of transferring it

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Jury Charge

1 to another person. Here again, you must determine that the
2 government has demonstrated the defendant intended to
3 distribute a quantity of heroin and/or cocaine.

4 Now, let me be clear, the government need only prove
5 that the object of the conspiracy was to distribute the
6 controlled substance or to possess the controlled substance
7 with the intent to distribute it. The government can but need
8 not prove both. You must however be unanimous as to which
9 object was proven beyond a reasonable doubt. If you find
10 beyond a reasonable doubt that the conspiracy charged in Count
11 One of the indictment existed then you must determine whether
12 the defendant intentionally and knowingly became a member of
13 that conspiracy.

14 You must determine not only whether the defendant
15 participated in the conspiracy but also whether he did so
16 intentionally and knowingly. That is, did he participate in
17 the conspiracy with knowledge of its unlawful purpose and with
18 the specific intention of furthering the objective of the that
19 conspiracy?

20 Knowledge is a matter inference from facts proved. A
21 person acts intentionally and knowingly if he acts purposefully
22 and deliberately and not because of mistake or accident, mere
23 negligence or other innocent reason. That is, the acts must be
24 the product of the defendant's conscious objective.

25 If you find that the conspiracy existed, that is the

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Jury Charge

1 element that we discussed a few moments ago and that the
2 defendant participated intentionally and knowingly in it, the
3 extent of the defendant's participation has no bearing on
4 whether or not he is guilty. The fact that a defendant's
5 participation in a conspiracy was more limited than that of a
6 co-conspirator should not affect your verdict.

7 Ultimately, the question is this. Has the government
8 proven beyond a reasonable doubt that the defendant joined the
9 conspiracy charged in the count you are considering, that he
10 intentionally and knowingly participated in it with the
11 awareness of its basic purpose and as something he wished to
12 bring about?

13 So let's talk more about extent of participation.

14 As I just said, the extent of the defendant's
15 participation in the conspiracy charged in the indictment has
16 no bearing on the issue of the defendant's guilt. He need not
17 have joined the conspiracy at the outset. But he must at some
18 point during its progress have joined the conspiracy with
19 knowledge as to its general scope and purpose.

20 If he did join with such knowledge at any time while
21 it was in progress he may still be held responsible for all
22 that was done before he joined and all that was done during the
23 conspiracy's existence while he was a member. Indeed, each
24 member of the conspiracy may perform separate and distinct acts
25 and may perform them at different times. Some conspirators

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Jury Charge

1 play major roles while others play minor parts in the scheme.
2 An equal role is not what the law requires. In fact, even a
3 single act may be sufficient to draw the defendant within the
4 ambit of the conspiracy.

5 I want to caution you however, that the defendant's
6 mere presence at the scene of an alleged crime does not by
7 itself make him a member of the conspiracy. Similarly, mere
8 association with one or more members of the conspiracy even
9 coupled with knowledge that such other person is acting
10 unlawfully does not automatically make the defendant a member.
11 A person may know, be related to or be friendly with a
12 conspirator without being a conspirator himself. Mere
13 similarity of conduct or the fact that the defendant may have
14 assembled together with others and discussed common aims and
15 interests does not necessarily establish proof of the existence
16 of a conspiracy. I also want to caution you that mere
17 knowledge or acquiescence without participation in the unlawful
18 plan is not sufficient.

19 Moreover, the fact that the acts of the defendant
20 without knowledge merely happen to further the purposes or
21 objectives of the conspiracy does not make the defendant a
22 member. More is required under the law. What is necessary is
23 that the defendant must have participated with knowledge of at
24 least some of the purposes or objectives of the conspiracy and
25 with the intention of aiding in the accomplishment of those

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Jury Charge

1 unlawful ends.

2 In sum, you must decide that with an understanding of
3 the unlawful character of the conspiracy the defendant
4 intentionally engaged, advised or assisted in the conspiracy
5 for the purpose of furthering the illegal undertaking. If you
6 make this determination, the defendant thereby became a knowing
7 and willing participant in the unlawful agreement, that is to
8 say a conspirator.

9 Now, in the event you find that the government's
10 proven beyond a reasonable doubt that the defendant is guilty
11 of the crime charged in Count One, that's the narcotics
12 conspiracy, then there are three more questions you have to
13 answer concerning the quantity of the controlled substance that
14 the defendant agreed to distribute with the other members of
15 the conspiracy charged in Count One.

16 Number one, did the government prove beyond a
17 reasonable doubt that the defendant conspired to distribute or
18 possess with intent to distribute one kilogram or more of
19 heroin?

20 So that has both the quantity and a type.

21 Two, did the government prove beyond a reasonable
22 doubt that the defendant conspired to distribute or possess
23 with intent to distribute 100 grams or more of heroin?

24 Three, did the government prove beyond a reasonable
25 doubt that the defendant conspired to distribute or possess

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Jury Charge

1 with intent to distribute 500 grams or more of cocaine?

2 So, the first two relate to heroin. The last one
3 relates to cocaine.

4 The verdict form has boxes on it that will lead you
5 through each of those questions and we'll have a box to check.
6 So it will specify the questions for you, all right.

7 Now, as I stated, Count Two charges the defendant with
8 participating in a different conspiracy, a conspiracy or I
9 should say a separate conspiracy. So there's three different
10 counts. Count One is a narcotics conspiracy. Count Two is the
11 robbery conspiracy and Count Three is the firearms charge.

12 So Count Two is a conspiracy to commit armed robbery
13 of individuals believed to be engaged in narcotics tracking.
14 That is, who had a quantity of heroin and/or cocaine. To find
15 the defendant guilty of this count you must find that the
16 government has proven beyond a reasonable doubt the following
17 two elements:

18 First, that this conspiracy as charged in the
19 indictment existed, that is an agreement or understanding
20 between two or more persons existed from in or about 2012
21 through on or about July 31, 2013, to intentionally and
22 knowingly commit a robbery.

23 Second, that the defendant intentionally and knowingly
24 became a member of that conspiracy.

25 Again, the first element that the government must

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Jury Charge

1 prove beyond a reasonable doubt to establish this conspiracy is
2 that two or more people entered the unlawful agreement charged
3 in the indictment. In other words, with respect to Count Two
4 the government must prove that there was, in fact, an agreement
5 or understanding to violate those provisions of law which make
6 it illegal to rob individuals believed to be engaged in
7 narcotics tracking.

8 I've already instructed you with respect to Count One
9 on how you should consider whether a particular conspiracy
10 existed and you should apply those instructions to Count Two as
11 well in terms of finding whether the conspiracy existed.

12 I've also instructed you that an object of conspiracy
13 is an illegal goal or object that the co-conspirators agree to
14 achieve. In Count Two the government has alleged that the
15 defendant joined a conspiracy, the goal of which was to commit
16 one or more robberies. Robbery is defined as the unlawful
17 taking personal property from another against his or her will.
18 This is done by threatening or actually using force, violence
19 or fear of injury immediately or in the future as to person or
20 property. In order to find that the defendant has conspired to
21 commit robbery you must find that the government has proven
22 beyond a reasonable doubt that the defendant participated in a
23 conspiracy to one, obtain or take personal property from
24 another or are the presence of another; two, against the
25 intended victim's will by actual or threatened force, violence

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Jury Charge

1 or fear of injury, whether immediate or in the future; and
2 three, these actions would have been in any way or degree
3 obstructed delayed or affected interstate commerce. And I will
4 now explain these three elements to you in greater detail.

5 The first element of the crime of robbery is the
6 obtaining or taking of personal property of another or from the
7 presence of another. The term "property" includes tangible and
8 intangible things of value. In this case the government
9 alleges that the property involved in the conspiracy charged in
10 count Two Was narcotics, specifically, heroin and/or cocaine.

11 The second element of the crime of robbery is the
12 unlawful taking of the property involved against the victim's
13 will by actual or threatened force, violence or fear of injury
14 whether immediate or in the future. There must be some nexus
15 or connection between the threat or use of force and the taking
16 of property.

17 In considering whether there was a conspiracy to use
18 or threaten to use force, violence or fear you should give
19 those words their common and ordinary meaning and understand
20 them as you normally would. The violence would not have to be
21 directed at the person whose property was taken. The use of a
22 threat of force or violence might be aimed a third person or at
23 causing economic rather than physical injury. Fear is if at
24 least one victim would experience anxiety, concern or worry
25 over expected personal harm or business loss. The potential

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Jury Charge

1 existence of fear must be determined by the facts existing at
2 the time of the conspiracy.

3 Your decision whether there was a conspiracy to use
4 force or threatened fear of injury involves a decision about
5 what the victim as state of mind would have been at the time of
6 the agreed upon actions. It is obviously impossible to
7 ascertain or prove directly what a person's subjective feeling
8 would be. You cannot look into a person's mind to see what his
9 or her state of mind would be. But a careful consideration of
10 the circumstances and evidence should enable you to decide
11 whether fear would reasonably have been the victim's stated of
12 mind.

13 It is not necessary that the fear would be a
14 consequence of a direct threat. It's sufficient that the
15 surrounding circumstances would have rendered the victims' fear
16 reasonable. You must find that a person would have been
17 fearful in the circumstance.

18 If you decide that the defendant conspired with one or
19 more people to obtain another's property against his will by
20 the use or threat of force, violence or fear of injury, you
21 must then decide for this count whether this agreed upon action
22 that is, the robbery of heroin and or cocaine, would have been
23 affected interstate or foreign commerce in any way or degree.
24 That is, you must determine whether had the robbery occurred
25 there would have been be an actual or potential effect on

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Jury Charge

1 commercial between any two are more states or on commerce
2 within one state that goes through any place outside the state
3 including another state or a foreign country.

4 The requirement of showing an effect on commerce
5 involves only a minimal burden of proving a connection to
6 interstate or foreign commerce and is satisfied by conduct that
7 affects commerce in any way or degree. For example, if the
8 object of a robbery was items which traveled or went through
9 interstate commerce that would be sufficient effect on
10 interstate commercial. Even a potential or subtle effect on
11 interstate commerce will suffice.

12 Let me give you some real world examples of affecting
13 interstate commerce. By ordering a book from Amazon.com and
14 that book is made in California and shipped to Amazon's
15 warehouse in Minnesota and then shipped to New York, that's
16 effecting interstate commerce. The book has traveled through
17 various states in commerce.

18 If two people conspire to steal bananas shipped into
19 New York from the Caribbean they are conspiring to effect
20 interstate commerce because the bananas traveled in interstate
21 commerce.

22 If decide that interstate or foreign commerce would
23 potentially or probably be effected if the charged conspiracy
24 had successfully completed its object then the elements of
25 effecting interstate commerce is satisfied. Because this is a

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Jury Charge

1 conspiracy case it is unnecessary that you find that interstate
2 or foreign commerce was actually effected, only that it would
3 have been if the conspiracy had succeeded. Moreover, the
4 defendant need not have intended or anticipated an effect on
5 interstate or foreign commerce. You may find that this element
6 is satisfied if the effect on interstate commerce would have
7 been a natural consequence of actions he agreed with others to
8 undertake.

9 If you find beyond a reasonable doubt that the target
10 of the robbery related to something that moved in interstate or
11 foreign commerce, then this element will have been met.

12 When considering this element it is important for you
13 to know that commerce effected or potentially effected need not
14 be lawful. Activities effecting or potentially effecting
15 unlawful interstate activity such as drug dealing and
16 trafficking may fall within the purview of the statute if the
17 other elements which I have explained to you are established.

18 Therefore, if you find that the conspiracy involved
19 robbing controlled substances and you find that the controlled
20 substances traveled or would have had to have been traveled to
21 get to New York in interstate or foreign commerce, then you may
22 find that element is satisfied.

23 In addition, this element may be met when the object
24 of a planned robbery did not actually exist. For example,
25 drugs in a sting operation as long as you find that the

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Jury Charge

1 government has proven beyond a reasonable doubt that the
2 defendant joined a conspiracy that would have affected
3 interstate commerce if the conspiracy had been successful as
4 planned.

5 Now if you conclude that the government has proven
6 beyond a reasonable doubt that the robbery conspiracy in Count
7 Two existed you must determine whether or not the defendant
8 joined that conspiracy knowing its unlawful purpose and to
9 further its unlawful objective. Here, the alleged purpose of
10 the conspiracy was to rob individuals believed to be engaged in
11 narcotics trafficking. I have already instructed you about how
12 one joins or participate in a conspiracy and you have those
13 same instructions here as well.

14 Now when people enter into a conspiracy to accomplish
15 an unlawful end each and every member of the conspiracy becomes
16 an agent for the other conspirators in carrying out the
17 conspiracy. Accordingly, the reasonably foreseeable acts,
18 declarations, statements and omissions of any member of the
19 conspiracy and in furtherance of the common purpose of the
20 conspiracy are deemed under the law to be the acts of all the
21 members and all the members are responsible for such acts,
22 declarations, statements and omissions.

23 If you find beyond a reasonable doubt that the
24 defendant was himself a member of the conspiracy charged in the
25 indictment then any acts done or statements made in furtherance

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Jury Charge

1 of the conspiracy by persons also found by you to have been
2 members of that conspiracy may be considered against the
3 defendant. This is so even if such acts were done and
4 statements were made in the defendant's absence and without his
5 knowledge.

6 However, before you may consider the statements or
7 acts of a co-conspirator in deciding the issues of the
8 defendant's guilt you must first determine that the acts and
9 statements were made during the existence and in furtherance of
10 the unlawful scheme. If the acts are done or the statement
11 made by someone whom you do not find to have been a member of
12 the conspiracy or if they were not done or said in furtherance
13 of the conspiracy they may be considered by you as evidence
14 only against the member who did or said them.

15 Finally, I will talk to you about Count Three, the
16 firearms offense. Count Three charges a firearms offense
17 connected to either the narcotics conspiracy charged in Count
18 One and/or the robbery conspiracy charged in Count Two. This
19 means that you cannot consider Count Three unless you first
20 determine that the defendant, Anthony Serrano, is guilty either
21 of the narcotics conspiracy charged in Count One or the robbery
22 conspiracy charged in Count Two or both.

23 Count Three also charges the defendant with aiding and
24 abetting the carried or possession of a firearm as well as the
25 brandishing a firearm in connection with Counts One and/or Two.

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Jury Charge

1 I will explain these concepts right now.

2 To meet its burden of proof with respect to Count
3 Three beyond a reasonable doubt the government has to prove the
4 following three elements:

5 First, that on or about the dates alleged in the
6 indictment the defendant either used, carried, or possessed a
7 firearm or aided and abetted the use, carrying or possession of
8 a firearm by someone else.

9 Second, that the defendant used or carried the firearm
10 or aided and abetted another's use or carrying of the firearm,
11 during and in relation to the specified crimes charged in
12 either Counts One or Two or that the defendant possessed a
13 firearm or aided and abetted another in the possession of the
14 firearm in furtherance of those same crimes, the conspiracies
15 of Counts One or Two.

16 Third, that the defendant acted knowingly.

17 And I am now going to review these elements for you.

18 As I mentioned, the first element the government has
19 to prove beyond a reasonable doubt in Count Three is that on or
20 about the dates set forth in the indictment the defendant used,
21 carried or possessed a firearm or aided and abetted the same.

22 I am now going to describe these terms for you.

23 A firearm is commonly known as a gun. It is defined
24 as any weapon which will or is designed or may readily be
25 converted to expel a projectile i.e. a bullet by the action of

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Jury Charge

1 an explosive. In considering the specific elements of whether
2 the defendant used or carried or possessed a firearm, it does
3 not matter whether the firearm was loaded or operable at the
4 time of the crime. Operability is not relevant to your
5 determination of whether a weapon qualifies as a firearm.

6 To show the defendant carried a firearm the government
7 must prove beyond a reasonable doubt that the defendant had the
8 weapon within his controls so that it was available in such a
9 way that it furthered the commission of the crime. The
10 defendant need not have held the firearm physically that is,
11 have had actual possession of it on his person. If you find
12 the defendant had dominion and control over the place where the
13 firearm was located and had the power and intention to exercise
14 control over the firearm and that the firearm was immediately
15 available to him in such a way that it furthered the commission
16 of the crime of violence or drug trafficking, you may find the
17 government has proven that the defendant carried the weapon.

18 I have a pen in my hand. There should be no doubt
19 that I physically possess this pen.

20 Let's say I brought it in my book bag with my personal
21 items in it and I left it on my clerk's desk. I don't
22 physically possess the bag in my hand but I have control over
23 it. So I can be said to possess it jointly with my clerk.

24 One more example. Say my grandmother had left me some
25 jewelry when she died and it is now sitting in a safety deposit

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Jury Charge

1 box at the bank. My siblings and I are the only people who can
2 get into that box. Do we have possession of the jewelry?
3 Absolutely, we have possession of it even though it is in a
4 safety deposit box inside a bank and not in our hands or even
5 in our homes.

6 Possession of a firearm in furtherance of a crime of
7 violence or of a drug tracking crime requires the defendant
8 possessed a firearm and that the possession advanced or moved
9 forward the crime. The mere presence of a firearm is not
10 enough. Possession in furtherance requires that possession be
11 incident to an essential part of the crime. The firearm must
12 have played some part in furthering the crime in order for the
13 elements to be satisfied.

14 Let's talk about aiding and abetting.

15 As I mentioned the defendant is also charged with
16 aiding and abetting in the firearms count which is Count Three
17 with which he's been charged. Accordingly, it would be
18 sufficient for this element and for this charge if the
19 defendant aided and abetted another person in the carrying and
20 possession of a firearm. Under this law it is not necessary
21 for the government to show that a defendant himself physically
22 committed the crime with which he is charged in order for you
23 to find him guilty. Thus, if you do not find beyond a
24 reasonable doubt that the defendant himself committed the crime
25 charged you may under certain circumstances still find the

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Jury Charge

1 defendant guilty of that crime as an aider or abettor. A
2 person who aids or abets another to commit an offense is just
3 as guilty of that offense as if he committed it himself. As
4 you could see the first requirement is that another person has
5 committed the crime charged, that is another person committed
6 every element of Count Three as I just described them.

7 Obviously, no one can be convicted of aiding and
8 abetting the criminal acts of another if no crime was committed
9 by the other person in the first place but if you do find that
10 a crime was committed, then you must consider whether the
11 defendant has aided and abetted the commission of that crime.
12 In order to aid or abet another to commit a crime it is
13 necessary that a defendant willfully and knowingly associate
14 himself in some way with the crime and that he willfully and
15 knowingly seeked by some act to help make the crime succeed.

16 Participation in a crime is willful if the action is
17 taken voluntarily and intentionally. That is to say with a bad
18 purpose either to disobey or to disregard the law. I have
19 already defined the term "knowingly" and you should apply that
20 term here and that definition here. The mere presence of a
21 defendant where a crime is being committed, even coupled with
22 knowledge by a defendant that a crime is being committed or the
23 mere acquiescence by a defendant in the criminal conduct of
24 others even with guilty knowledge is not sufficient to
25 establish aiding and betting.

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Jury Charge

1 An aider and bettor must have some interest in the
2 criminal venture. In order to convict the defendant of aiding
3 and abetting the another's use, carrying and possession of a
4 firearm you must find that the defendant actively
5 participated -- strike that word first. Let me do that again.

6 in order to convict the defendant of aiding and
7 abetting another's use, carrying or possession a firearm you
8 must find that the defendant activity participated in the
9 underlying drug trafficking or violent crime with advanced
10 knowledge that a co-conspirator would use or carry a gun during
11 a crime's commission. When I am talking about violent crime
12 here, I am referring to the robbery in Count Two, the
13 conspiracy robbery.

14 It is not enough to find that the deaf performed an
15 act to facilitate or encourage the commission of the underlying
16 crime of violence or a drug trafficking crime with only the
17 knowledge that a firearm would be used or carried in the
18 commission of that crime. Instead, you must find that the
19 defendant performed some act that facilitated or encouraged
20 actual carrying, use or possession of a firearm in relation to
21 the underlying crime and that he had advanced knowledge that a
22 firearm would be present during the crime. For example, if you
23 find that the defendant directed another person to use, carry
24 or possess a gun in the commission of the underlying crime or
25 made such a gun available to the other person, then the

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Jury Charge

1 defendant aided and abetted other person's use of a firearm.
2 This example is offered only by you as a way of illustration
3 and is not meant to be exhaustive.

4 The second element that government must prove beyond a
5 reasonable doubt is that the defendant carried a firearm during
6 and in relation to a crime of violence or drug trafficking
7 crime or possessed a firearm in furtherance of such a crime or
8 aided and abetted the same. Possession and furtherance as
9 indicated requires a possession to be incident to and an
10 essential element of the crime. The firearm must have played
11 some are part in furthering the crime in order for this element
12 to be satisfied.

13 I instruct you that the narcotics conspiracy alleged
14 in Count One qualifies under the law as a drug trafficking
15 crime and I instruct you that the robbery conspiracy alleged in
16 Count Two qualifies as a crime of violence under the law. I
17 also instruct that in order to find the defendant guilty of
18 Count Three the jury must be unanimous as to whether it was the
19 drug trafficking crime charged in Count One or the crime of
20 violence charged in Count Two or both that the defendant used
21 or carried a firearm during or and in relation to or possessed
22 a firearm in furtherance of or aided and abetted the same.

23 The final elements the government has to prove beyond
24 a reasonable doubt for Count Three is that the defendant used,
25 carried or possessed a firearm or knew that he was aiding and

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Jury Charge

1 abetting another's use, carrying and possession of a firearm.
2 To satisfy this element you must find that the defendant had
3 knowledge that what he or another whom he was aiding and
4 abetting was carrying or using or possessing was a firearm or
5 advanced knowledge that another whom he was aiding and abetting
6 would be carrying or using or possessing a firearm. I have
7 previously defined "knowingly" for you and you should apply
8 that definition here.

9 In order for the government to satisfy that element it
10 must be proven beyond a reasonable doubt that the defendant
11 knew what he was doing that is, that he knew that he was
12 carrying, using or aiding and abetting another's use, carrying
13 or possession of a firearm in the commission of a drug
14 trafficking crime or crime of violence.

15 Let's talk about brandishing.

16 If and only if you find the defendant guilty of Count
17 Three, then you must make a special finding on that count and
18 that's on the verdict form. Specifically, you must determine
19 whether or not during the defendant's use, carrying or
20 possession of a firearm, he brandished the firearm or aided and
21 abetted another to brandish the firearm. Now, to brandish a
22 firearm means that all or part of the weapon was displayed or
23 the presence of the weapon was otherwise made known to another
24 person to intimidate that person regardless of whether the
25 weapon was directly visible to that person. The weapon does

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Jury Charge

1 not have to be directly visible but it must be present. Your
2 finding as a brandishing must be beyond a reasonable doubt. In
3 addition, it must be unanimous and that all of you must agree
4 that the firearm was brandished before you can check that box
5 on the form. You will be provided a verdict form and it will
6 indicate to you where to fill in your determination on that
7 issue.

8 We're almost there. You OK?

9 There's another method by which you may evaluate the
10 possible guilt of the defendant with respect to the Count
11 Three, the firearms charge. Even if you do not find that the
12 government has satisfied its burden of proof with respect to
13 each element of that crime. If in light of my instructions you
14 find beyond a reasonable doubt that the defendant was a member
15 of the conspiracy connected with a substantive crime charged,
16 the narcotics conspiracy in Count One or the robbery conspiracy
17 charged in Count Two, then you may also but are not required to
18 find the defendant guilty of the firearms charge in Count Three
19 provided that you find each of the following elements had been
20 established beyond a reasonable doubt.

21 First, that the crime charged in Count Three was
22 committed.

23 Second, that the defendant was a member of the
24 conspiracies in Count One or Two that you found existed.

25 Third, that the firearms offense was committed

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Jury Charge

1 pursuant to the common plan and understanding you found to
2 exist among the conspirators involved in that conspiracy.

3 Fourth, that the defendant was a member of the
4 conspiracy at the time the firearms offense was committed.

5 Fifth, that the defendant could reasonably have
6 foreseen that the firearms offense might, reasonably have
7 foreseen that the firearms offense might be committed by his
8 co-conspirator.

9 If you find that all five of these elements exist
10 beyond a reasonable doubt then you may find the defendant
11 guilty of Count Three even if he did not personally participate
12 in the acts constituting the crime or did not have actual
13 knowledge of it.

14 The reason for this rule is that a co-conspirator who
15 commits a substantive crime as part of a conspiracy is deemed
16 to have been the agent of the other conspirators. Therefore,
17 all of the co-conspirators bear criminal responsibility for the
18 commission of the substantive crimes. If however, you are not
19 satisfied as to the existence of any of these five elements,
20 then you may not find the defendant guilty of Count Three
21 unless the government proves beyond a reasonable doubt that the
22 defendant personally committed or aided and abetted the
23 commission of the crime charged in Count Three.

24 Final instructions.

25 The indictment alleges that certain events or

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Jury Charge

1 transactions occurred on or about various dates. You've heard
2 sort of 2012 up through and including July 31, 2013. It is not
3 necessary, however, for the government to prove that these
4 events or transactions occurred on exactly those dates. When
5 the crime charged was the crime of conspiracy it is sufficient
6 if you find that the defendant was a member of the conspiracy
7 charged in the indictment for sometime within that period.

8 In addition to all of the elements that I have
9 described for you with respect to Counts One, Two and Three of
10 the indictment, you must also decide whether any act in
11 furtherance of the charged offense occurred within the Southern
12 District of New York. Now, this applies to each of the three
13 counts, OK. The Southern District of New York includes the
14 following counties: Manhattan, the Bronx, Westchester,
15 Dutchess, Putnam, Rockland, Orange and Sullivan Counties. So
16 this element is called venue. Venue simply means place or
17 location.

18 In regard to venue the government does not have prove
19 that any crime was committed in this district or that the
20 defendant was present here. It is sufficient to satisfy this
21 element if any act in furtherance of the crime you are
22 considering occurred within this district. I further instruct
23 that you any action in the Southern District of New York or any
24 communication into or out of the Southern District of New York
25 can establish venue as long as the action furthers the

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Jury Charge

1 conspiracy charged. On this issue of venue and this issue
2 alone, the government need not prove venue beyond a reasonable
3 doubt but only by a mere preponderance of the evidence.

4 A preponderance of the evidence means more likely than
5 not. Thus, the government has satisfied its burden of venue if
6 you conclude that it's more likely than not that some act in
7 furtherance of each charged defense was committed in this
8 district. If you find that the government has failed to prove
9 the venue requirement, even if all the other elements of the
10 offense are proven, then you must acquit the defendant.

11 Now, under your oath as jurors you are not to be
12 swayed by sympathy. You are to be guided solely by the
13 evidence in the case. And the crucial question that you must
14 ask yourselves as you sift through the evidence is, has the
15 government proven the guilt of the defendant beyond a
16 reasonable doubt? It is for you alone to decide whether the
17 government has proven that the defendant is guilty for the
18 crime for which he's been charged solely on the basis of
19 evidence or the lack of evidence and subject to the law as I
20 charge you. It must be clear to you that once you let fear,
21 prejudice, bias or sympathy interfere with your thinking there
22 is a risk that you will not arrive at a true and just verdict.

23 If you have a reasonable doubt as to the defendant's
24 guilt you should not hesitate for any reason to find a verdict
25 of acquittal. But on the other hand, if you should find that

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Jury Charge

1 the government's met its burden of proving the defendant's
2 guilt beyond a reasonable doubt you must not hesitate because
3 of sympathy or any other reason to render a verdict of guilty.

4 The question of possible punishment of defendant is of
5 no concern to you, ladies and gentlemen of the jury, and should
6 not in any sense enter into or influence your deliberations.
7 The duty of imposing a sentence rests exclusively upon the
8 Court. Your function is to weigh the evidence in the case and
9 to determine whether or not the defendant is guilty beyond a
10 reasonable doubt solely on the basis of the evidence.

11 Now note-taking.

12 Some of you took notes during the trial. Don't show
13 your notes to anybody else or discuss your notes with any other
14 juror during deliberation. Those notes are to help you and to
15 assist you alone. The fact that any particular juror has taken
16 notes does not entitle that juror to have his or her vies
17 assume greater weight than those of any other juror. And
18 finally, your notes are not to substitute for your recollection
19 of the evidence. If you have any doubt as to testimony you
20 have the official transcripts read back and we are going to
21 talk about that.

22 Your function is now to weigh the evidence in the case
23 and determine the guilt or innocence of the defendant, Anthony
24 Serrano, with respect to each one of the counts in the
25 indictment with which he's been charged. And, again, you have

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Jury Charge

1 to consider his guilt or non guilt as to each count separately.
2 You are about to begin your deliberations. Many, but not all
3 of exhibits will be sent with you as I said to the jury room.
4 We are not going to send the firearms or ammunition with you
5 into the jury room. If you want to see any physical evidence
6 that's not sent into the jury room we'll have you out here
7 again and we'll show it to you.

8 Now, you're entitled and certainly if you have any
9 questions you should write them down and talk to each other.
10 You'll write any questions down on a piece of paper. Joe will
11 give you guys a particular form with envelopes. The jury
12 foreperson will then with that question sign and put the time
13 down on that question, stick it in the envelope and that
14 envelope may say, the question may say, I'd like to hear the
15 testimony of Victor Moral read back on the following point.
16 Try to be as specific as you can possibly be about what you
17 want to have read back, OK, like that direct of so and so on a
18 particular topic or something else because otherwise it's like
19 a hunt peck.

20 Now, we can hunt peck and we know the record pretty
21 well but. By be as specific as you can because it'll help us
22 get the answer to you very quickly to isolate that piece of
23 testimony. Then what we'll do is either send that copy of that
24 portion of the transcript into the jury room or we'll call you
25 out hear and we'll read it to you.

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Jury Charge

1 Now, let me describe how this process works in a
2 little more detail. This is not to in any way deter you from
3 asking questions but to make sure that you understand that your
4 questions cannot be answered with the snap of a finger
5 immediately. You come up with a question. You write it down.
6 Everybody knows about the question. All of you should know
7 about the question. No rogue jurors. Somebody signs. The
8 foreperson signs the question form. It goes into the envelope.
9 The envelope will go to the marshal because you are going to be
10 turned over to the care of the U.S. marshal who will be outside
11 your door. The marshal will come find Joe. Joe will be
12 sitting somewhere around here. Joe will come find me. I'll be
13 sitting here or there or a couple floors down. I will then
14 open the envelope. I will read the envelope. I will come out.
15 We'll will gather everybody up. We'll get the court reporter
16 up and we'll then decide what to do with your question. We'll
17 talk about it. Then we'll call you out. I'll read you the
18 question and make sure there's no rogue juror. We'll tell you
19 how we're going to answer the question. I just tell you that
20 not to deter you but so you don't think it's a two minute, 37
21 second process. It's going to take us a little time. Be very
22 specific so we can get you what you need. Any communication
23 with the Court has to occur in writing. And it will be given
24 to the foreperson which will be given to the marshal. So even
25 if you need more coffee, that is the kind of thing that will go

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Jury Charge

1 in writing in an envelope, even if it's not just a question and
2 I'll respond as quickly as I can.

3 Now, in any notes do not tell us ever how your vote
4 stands. Do not say, by the way, we're at five to seven on the
5 following question. We are at 11 to one and we really need the
6 following answer. Don't do that. The split of the vote is for
7 you and you alone to know. Don't share it with me. Don't
8 share it with anybody, OK, until you return the verdict. That
9 is for you and you alone. And the verdict must be unanimous.

10 Your first task is going to be -- I am on page 72 --
11 is to choose a foreperson. The foreperson does not have any
12 greater voice or authority than any other juror but will be the
13 person who communicates with the Court when questions arise.

14 Now, how do you choose a foreperson there. Are as
15 many ways as people's creative minds can think of. Sometimes
16 jurors throw their juror numbers into a hat and pull one out.
17 Sometimes somebody volunteers. Sometimes Juror No. 1 gets
18 picked because that's what they see on TV. There's no right or
19 wrong way to do it. It's for you to decide.

20 (Continued on next page)

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Charge

1 THE COURT: The most important part of the case,
2 ladies and gentlemen of the jury, is the part that you are
3 about to play in your deliberations on the issues of fact. It
4 is for you and you alone to decide whether the government has
5 proven beyond a reasonable doubt the essential elements of the
6 crime with which the defendant here has been charged. If the
7 government has succeeded, your verdict should be guilty; if it
8 has failed, it should be not guilty. Again, you must consider
9 each count individually.

10 I know that you will try the issues that have been
11 presented to you according to the oath that you have taken as
12 jurors. In that oath you promised that you would well and
13 truly try the issues joined in this case and a true verdict
14 render. Your function is to weigh the evidence in the case and
15 to determine whether or not the defendant is guilty solely
16 based upon the evidence.

17 As you deliberate, please listen to the opinions of
18 your fellow jurors and ask for an opportunity to express your
19 own views. Every juror should be heard. No one juror should
20 hold center stage in the jury room, and no one juror should
21 control and monopolize the deliberations.

22 If, after listening to your fellow jurors, and if
23 after stating your own view, you become convinced that your view
24 is wrong, do not hesitate because of stubbornness or pride to
25 change your view. On the other hand, do not surrender your

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Charge

1 honest convictions and beliefs because of the opinions of your
2 fellow jurors or because you are outnumbered. Your final vote
3 must reflect your conscientious belief as to how the issues
4 should be decided. Your verdict must be unanimous. If at any
5 time you are not in agreement you are instructed that you are
6 not to reveal the position of the jurors, that is, the split of
7 the vote.

8 Finally, I say this not because I think it's necessary
9 but because it's the custom of the courthouse to say this: You
10 should treat each other with courtesy and respect for your
11 deliberations.

12 All litigants stand equal in this courtroom. All
13 litigants stand equal before the bar of justice. All litigants
14 stand equal before you. Your duty is to decide the issues
15 before you fairly and impartially, and to see that justice is
16 done.

17 Under your oath as jurors are you not to be swayed by
18 sympathy; you are to be guided solely by the evidence presented
19 at the trial and the law as I've given it to you, without
20 regard to the consequences of your decision. You have been
21 chosen to try the issues of fact and to reach a verdict on the
22 basis of the evidence or lack of evidence. And, again, if you
23 let sympathy interfere with your clear thinking, there is a
24 risk you will not arrive at a just verdict.

25 All parties are entitled it a fair trial. You must

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Charge

1 make a fair and impartial decision so that we will arrive at a
2 just verdict.

3 Counsel, is there anything that we should raise before
4 I let the jury go into the jury room?

5 MS. MAIMIN: Not from the government.

6 MR. DE CASTRO: No, your Honor.

7 THE COURT: All right. Then, ladies and gentlemen, I
8 am about to send you into the jury room. Let me just quickly
9 review with you the verdict form.

10 Do they have the verdict form?

11 The verdict form is self explanatory. You will check
12 a box as indicated and as necessary. So, there will be one
13 blank one in the jury room.

14 One more thing. I don't know if there are any folks
15 who are smokers on the panel. The reason I ask is because
16 sometimes during trial, members of the jury want to go and take
17 a smoke break, and so this instruction applies whether it's a
18 smoke break or you want to go have a diet coke. It's
19 irrelevant to me.

20 If someone is out of the room for a period of time,
21 you have to wait until they come back. You can't have somebody
22 like having a smoke break in front of the building and then
23 everybody else delivers a verdict. Right? And we will talk
24 about what happens tomorrow morning if you are still
25 deliberating, because you have to wait until everybody gets

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1 here before you can start again.

2 Now Alternates 1 and 2, you will not go into the jury
3 room. You will go in and get your stuff, but you will then
4 leave. Make sure Joe has your phone number. It does happen --
5 and we have had it happen before -- that people get called upon
6 to come serve and to deliberate. So, you are relieved for the
7 day but not dismissed from your participation on the panel.
8 Joe will call you as soon as there is a verdict, so you will
9 know you're done. At that time you too will be released from
10 your oath of silence. Until then, I instruct you to continue
11 not to talk about this case to anyone because it may well be
12 the case that we have to call upon you. So, I ask you to
13 maintain that silence. And we will call you and let you know
14 as soon as it's over so that you can be relieved from that oath
15 and you will know it's now done.

16 All right? I want to thank you. I know that probably
17 it is most difficult to be an alternate in some ways, because
18 you sit there through all of the evidence, you are as attentive
19 as everyone, and then just by luck of where you got sat you
20 don't get to deliberate. I understand that, and I appreciate
21 that, and I want to thank you for your service. So, Joe will
22 know where to find you.

23 Everybody else, I now instruct you that you are to go
24 into the jury room and talk to each other. I will have my
25 deputy now swear in the marshal. You will be turned over to

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1 the care of the marshal.

2 (Marshal sworn)

3 THE COURT: Ladies and gentlemen, please proceed.

4 (Jury commences deliberations at 1:40 p.m.)

5 THE COURT: All right. Ladies and gentlemen, just be
6 seated for one moment and talk about procedure. And I do have
7 another matter in this room that needs to start immediately. I
8 have a criminal matter, but let's talk about how we will
9 proceed.

10 So, you need to be available, anybody who wants to be
11 here at the time of making a decision about questions and/or
12 the verdict. We won't wait for people to come from an office
13 across town. That's sort of like done on television and not
14 done in real life.

15 So, what we will do is there are often questions in
16 the first hour, as you folks know, where people get settled and
17 the jurors say what does it mean X, Y or Z again. So I stay
18 very close. I stay in my robing room which is right next to my
19 room. I don't go to my chambers which is on a different floor,
20 so I stay right there for the first hour or two, and I am
21 available for questions. So, hopefully you folks can be in the
22 vicinity. Just make sure Joe knows where to find you.

23 But anybody who wants to be present if there is a
24 question read, or if a note comes out and it's a verdict,
25 should make sure that Joe knows where to find you and he can

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1 get ahold of you immediately, so you can come upstairs.

2 Usually the biggest delay is simply getting the court reporter,
3 if it's been a little while, to have to come upstairs. We
4 shouldn't be much of a delay.

5 Hopefully then the U.S. Attorney's office also will
6 have their electronic version of the transcript available in
7 case we have any questions, so that we can isolate the
8 transcript pages and do any redactions necessary as quickly as
9 possible, but typically you folks do, and so I am counting on
10 you.

11 MR. DE CASTRO: We have ours as well.

12 THE COURT: You have one as well, terrific. Perfect.
13 So then both sides will be able to get that done.

14 Joe will be here until there is a verdict, so for the
15 rest of today. And if we are still going tomorrow, he will be
16 here until there is a verdict.

17 Tomorrow I will tell you I have matters all day long
18 in this room, but I have done that before. When juries are
19 out, the jury takes precedence. Whenever they have a question,
20 I interrupt whatever I am doing, and we go immediately to the
21 jury. So I push everybody back and take you guys forward, but
22 that allows me, because it can take hours, days, who knows how
23 long for a jury to come back.

24 MR. DE CASTRO: I want to signal an issue. It's not a
25 big issue, but I planned this to be a two week trial, into the

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1 second week, and I have a sentencing before Judge Marrero at 2
2 p.m. tomorrow.

3 THE COURT: All right. So, if there is an issue we
4 will deal with that as it comes in terms of timing, and we will
5 see where the jury is at that point.

6 All right. So, just stay close. Stay in touch with
7 Joe. And I am going to ask you now -- you can stay in the
8 room. It's perfectly fine for you to stay in the room, but I
9 just need people to give me some space at the first two tables
10 so we can let our other --

11 Oh, you know, I think that Mr. Serrano may need to go
12 downstairs while this occurs, because the other individual is
13 also in custody, so I think we have to do a swap. All right.

14 (Recess)

15 (Time noted 5:00 p.m.)

16 THE COURT: All right. Let's bring out the jury.

17 (Jury present)

18 THE COURT: We will talk a little bit about the
19 procedures for tomorrow morning. We are going to let you folks
20 go now. It's 5 o'clock, a couple minutes after five. You will
21 pick up tomorrow at 9:30, your regular time. You have to wait
22 until everybody is here, all 12 of you are here, before you can
23 begin to deliberate. So, if people are here a little early but
24 not everybody is here, you should just talk about the weather
25 or something else until you have the whole complement of

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1 people. Now, I won't be calling you out here to have you
2 begin. You are going to be taking your own attendance in
3 there. The marshals will let us know if you folks haven't all
4 arrived. But if for some reason somebody is not here by 10
5 o'clock, my goodness, let us know. Let the marshal know so
6 that we can follow up. We don't want you sitting around and
7 hanging out in that room unable to deliberate. We will figure
8 something out.

9 So, we will also have lunch for you tomorrow. Tell
10 the marshal if you want anything different than what was
11 arranged for you today, but otherwise it will essentially be
12 the same thing.

13 If there are notes tomorrow, then you will just write
14 me a note, sending it through the marshal, but otherwise you
15 start at 9:30, you start on your own, and we will see you with
16 an envelope for us, with either a note or something else.

17 I want to remind you not to talk to anybody else or
18 only with each other about there case when you are
19 deliberating, and not to do any of that social media stuff we
20 talked about like Facebooking.

21 (Jury not present)

22 THE COURT: All right, ladies and gentlemen, let's be
23 all seated and talk about our procedures for tomorrow morning.
24 I do have a series of matters in here, including one very large
25 I don't want to call it circus, because it's not really a

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1 circus, it's a large matter. But this matter here, this
2 Serrano trial, takes absolute precedence. You are in the midst
3 of jury deliberations so, we will take jury notes when ever
4 they come in and proceed a pays.

5 But in the meantime we start at 9 on the MDL? So I
6 start at 9 o'clock on the MDL. The jury will be doing its
7 thing. So long as you folks are in the vicinity, just let Joe
8 know thousand are here and around and where to find you, and I
9 will let you know when we have a note of some sort, either a
10 question or otherwise. Anything else?

11 MS. MAIMIN: Not from the government.

12 MR. DE CASTRO: No, Judge.

13 THE COURT: So we are adjourned for the evening. Good
14 night.

15 (Trial adjourned to June 20, 2014 at 9:00 a.m.)
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